

June 28, 2022

ADDISON TREEHOUSE

14681 MIDWAY RD. SUITE 200, ADDISON, TX 75001 5:30 PM EXECUTIVE SESSION & WORK SESSION 7:30 PM REGULAR MEETING

Notice is hereby given that the Addison City Council will conduct a Regular Meeting on Tuesday, June 28, 2022 at the Addison TreeHouse. A quorum of the governing body will be physically present at the foregoing location. Email comments may be sent to: iparker@addisontx.gov by 3:00 pm the day of the meeting. The meeting will be live streamed on Addison's website at: www.addisontexas.net.

Call Meeting to Order				
Pledge of Allegiance				

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to:

Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- Review and Consider for Action Submittals Made by Executive Search Firms for the Town's City Manager Selection Process
- Interim City Manager

Reconvene in to Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

WORK SESSION

1. Present and Discuss **Non-Profit Grant Funding Presentations for Fiscal Year 2023.**

REGULAR MEETING

Announcements and Acknowledgments Regarding Town and Council Events and Activities

Discussion of Meetings / Events

Public Comment

The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item 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.

2. Consider Action on the <u>Minutes from the June 7, 2022 Strategic</u> Planning Retreat.

- 3. Consider Action on a <u>Resolution Appointing Council Liaisons for</u> Fiscal Year 2022-2023.
- 4. Consider Action on a Resolution Appointing Janet Depuy, City of Richardson Mayor Pro-Tem, as the Primary Representative and Guillermo Quintanilla, Town of Addison Council Member, as the Alternate to the Aggregated Position of Representative to the Regional Transportation Council (RTC) of the North Central Texas Council of Governments.
- 5. Consider Action on a Resolution Consenting to the Change of Control of Westgrove Air Plaza I and Westgrove Air Plaza II ("Tenant") from MM Aviation Holdings, LLC to Westgrove Aviation Group, LLC, and Authorizing the City Manager to Execute the Consent of Landlord Confirming the Change of Control Agreement.
- 6. Consider Action on a Resolution Approving a Concessionaire

 Agreement with Java and Hopps for Concession Services to be

 Provided at Addison Circle Park Pavilion and Authorizing the City

 Manager to Execute the Agreement.
- 7. Consider Action on a Resolution Approving an Agreement Between the Town of Addison and McClung Roofing for Roofing Restoration at the Police and Municipal Courts Facility and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$383,810.
- 8. Consider Action on a Resolution Approving Change Order #1 to the Contract Between the Town of Addison and TDIndustries, Inc. for Additional Electrical Work at the Police and Municipal Courts

 Upgrade Project and Increasing the Contract Amount by \$123,114; and, Authorizing the City Manager to Execute the Change Order in an Amount Not to Exceed \$779,774.51.
- 9. Consider Action on a <u>Resolution Adopting the Fiscal Year 2023</u>
 <u>Strategic Pillars and Milestones.</u>

- 10. Present, Discuss, and Consider Action on a Resolution Approving an Airport Ground Lease Agreement Between the Town of Addison and Addison Hangars, LLC for Commercial Aeronautical Use on Approximately 6.054 Acres of Improved Land Located at the Addison Airport, Authorizing the Remediation and Demolition of the Existing Building and Structures on the Foregoing Property, and Authorizing the City Manager to Execute the Ground Lease and Other Necessary Agreements.
- 11. Hold a Public Hearing, Present, Discuss, and Consider Action on a Resolution Approving the Financing and Refinancing of a Project for the Development of Airport Facilities at the Addison Airport

 Solely for Purpose of Section 147(f) of the Internal Revenue Code of 1986, as Amended and Section 66.0304(11)(A) of the Wisconsin Statutes, as Amended.
- 12. Present, Discuss, and Consider Action on a Resolution Approving the Ground Lease Agreement Between the Town of Addison and Sky Squared, LLC for Corporate and Commercial Aeronautical Use on Approximately 2.12 Acres of Improved Land at Addison Airport and Authorizing the City Manager to Execute the Ground Lease.
- 13. Present, Discuss, and Consider Action on a Resolution Approving a
 Ground Lease Between the Town of Addison and AQRD Hangar
 Management LLC for Commercial Aviation Use on Approximately
 1.57 Acres of Improved Land Located at the Addison Airport and
 Authorizing the City Manager to Execute the Ground Lease.
- 14. Present, Discuss, and Consider Action on a Resolution Approving the Ground Lease Between the Town of Addison and Scarborough I

 Airport, LP for Commercial Aviation Use on Approximately .55 Acres of Improved Land Located at the Addison Airport and Authorizing the City Manager to Execute the Ground Lease.
- 15. Present, Discuss, and Consider Action on an Ordinance of the Town of Addison, Texas Approving a Developer Participation Agreement with Scarborough I Aviation, LP for the Construction of Certain Public Improvements Within Addison Airport to a Portion of the Taxiway Uniform Shoulder and Apron; Providing for the City's Participation in the Costs of the Improvements in Conformance with Chapter 212 of the Texas Local Government Code; and Authorizing the City Manager to Execute the Agreement in an Anticipated Amount

Not To Exceed \$236,192.

16. Present, Discuss, and Consider Action a Resolution Approving an Assignment of Ground Lease Between Scarborough I Airport, L.P. and Bel Air Communities, LLC for the Purpose of Assigning Leasehold Interest in Certain Airport Land Consisting of a Total of .55 Acres of Taxilane Uniform Located at the Addison Airport and Authorizing the City Manager to Execute the Consent of Landlord.

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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.

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.

POSTED BY:	
Irma G. Parker, City Secretary	
DATE POSTED: 6/23/2022	
TIME POSTED: 6:00PM	
DATE REMOVED FROM BULLETIN BOARD:	
REMOVED BY:	

Council Meeting 1.

Meeting Date: 06/28/2022

Department: Finance

Pillars: Optimize the Addison Brand

AGENDA CAPTION:

Present and Discuss **Non-Profit Grant Funding Presentations for Fiscal Year 2023.**

BACKGROUND:

At the request of Council, Non-profit organizations that submitted an application for grant funding from the Town of Addison for Fiscal Year 2023 were invited to present to the City Council. The purpose of the presentation is to allow the City Council the opportunity to hear more about each organization's mission and what they do to serve the Addison community.

Below is the list of Non-Profit Organizations that submitted applications. This list will also serve as the planned order for presentations. Each Non-Profit Organization has a time-cap of five minutes to present.

- Addison Arbor Foundation
- Dallas Cat Lady
- Metrocare Services
- Metrocrest Services
- Outcry Theatre
- WaterTower Theatre
- Woven Health Clinic

The City Council will make final funding decisions as part of the budget process.

RECOMMENDATION:

Information only, no action required.

Attachments

Presentation - Addison Arbor Foundation

Presentation - Dallas Cat Lady

Presentation - Metrocare Services

Presentation - Metrocrest Services

Presentation - Outcry Theatre

Presentation - WaterTower Theatre Presentation - Woven Health Clinic

ADDISON ARBOR FOUNDATION





Addison Arbor Foundation (AAF) organization

- <u>All volunteer</u> organization (currently 7 Board of Directors)
- 501(c)(3) nonprofit organization with a broad charter to promote and enhance landscaping, public art, public parks and parks and recreation programs of the Town of Addison
- Incorporated in 1995 by the Town of Addison; in 2009, management and oversight was transferred to non-Town personnel

AAF accomplishments since inception:

- Managed and sponsored 19 notable public art projects since 2012; 2 scheduled in 2022
- Provided funding of \$9,395 so far this fiscal year to support planting of 29 trees damaged in February 2021 storm; total of about 330 new and replacement trees funded by AAF to date
- Sponsored formation of and currently administer the Community Garden; repainted shed and pavilion with funding provided by Pressed and the Town of Addison
- Recent Dallas Morning News article featured Addison public art

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(ADDISON)

ADDISON ARBOR PROJECTS FY2020-2021



Golden Hour by Russ Connell



Tango Fantasia by Art Fairchild





Spectra by Scott Shubin

The Givers by Jim Eppler (ravens) and Scott Shubin (perch)





Aikido

- Kinetic sculpture by David B. Hickman
- One of his original kinetic pieces
- Originally located in Addison Circle area (near Beckert Park)
- AAF procured and restored Aikido in 2018
- Installation planned in 2022 at the Addison Airport Galaxy FBO location on Addison Road across from the Addison Conference

Centre



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Rocko, one of two pieces purchased from artist Russ Connell, awaits installation at Addison Grove

Rocko, Addison Grove



ADDISON ARBOR POTENTIAL PROJECTS FY2022

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- AAF continues to work with the Parks Department to identify priorities for landscaping and parks enhancements as well as public art
- Landscaping
 - Tree and shrub replacement opportunities as identified by Parks Department staff (e.g., Redding Trail)
 - Additional benches and/or other park enhancements may be considered
- Public art
 - Discussion ongoing with artists Pascale Pryor, Joshua Tobey and others about new projects
 - Looking for new artists that could bring unique pieces to enhance Addison park space
 - Interactive/kinetic art that can be purchased at reasonable price
 - Participating on Town committee for Public Safety sculpture.



Benefits of AAF projects to Town of Addison:

- We actively manage major public art projects (identify artists/art works, enter into contracts, coordinate with suppliers and the Town, etc.), administer the Community Garden and provide funding to supplement the Town's budget for landscaping
- Citizens are discovering and enjoying public art as they spend more time in our parks
- Art collection promotes Addison as a public art destination (DART Silver Line station windscreens will depict images of our public art)

Funding of \$65,000 to enable continuation of our public art and landscaping projects

- One or more public art installations (depending on size and funding)
- Landscaping (trees, shrubs and plantings) and/or parks enhancements
- Operating costs (which are kept to a minimum)

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DALLAS CAT LADY



Non-Profit Funding Application 2022-2023

Town of Addison Council Presentation
June 28, 2022







Dallas Cat Lady is an all-volunteer organization dedicated to reducing the homeless cat population through trap-neuter-return, spay/neuter, and placing cats and kittens into loving homes through our adoption program.

We are a foster-based organization and do not have a shelter.





► We are avid promoters of the Trap-Neuter-Release process to assist in the reduction of homeless cats by spaying and neutering.

► We are dedicated to educating the public on the basics of the process to expand the community helping with TNR and the number of feral cats being fixed.

ADDISON

► ONGOING CHALLENGES:

- Kitten season always increases the demands on our resources. The previous shutdown of spay/neuter clinics is still having a ripple effect on the increased number of unfixed cats being born and requests for help are running high!
- Plus, in this Post-Covid world, more people are having to relocate, have family that have passed away or have lost their jobs. As a result, cats are being abandoned and rehomed at record pace and our intake has reached an unprecedented number.
- All of this has impacted us financially and we are stretched more than ever before. But Dallas Cat Lady has been stepping up to help as many people as our funds will allow.

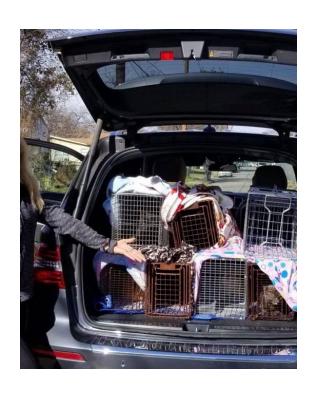








Several of our volunteers live right in Addison and work with animal control and their neighbors to help reduce the homeless cat population on a daily basis! Plus, we have other volunteers that actively conduct TNR efforts right along side them!











RESCUE CAN BE HARD, BUT WE ALSO GET TO MAKE SMILES LIKE THESE!

In our 16 years at the Petco on Beltline Road we have placed over 12,000 cats and kittens into loving homes.

Many of them started their life on the street or in apartment or business parking lots.

Getting kitties from the before...to the after...takes lots of time, volunteer resources and money...but it's our mission!

We are requesting \$7,500 to assist with our spay/neuter initiatives for the 2022/2023 calendar year.

This amount would allow us to spay/neuter about 150 cats and kittens – stray or feral cats as well as cats and kittens in our foster system for adoption.





EVERY CAT FIXED MAKES A HUGE DIFFERENCE!

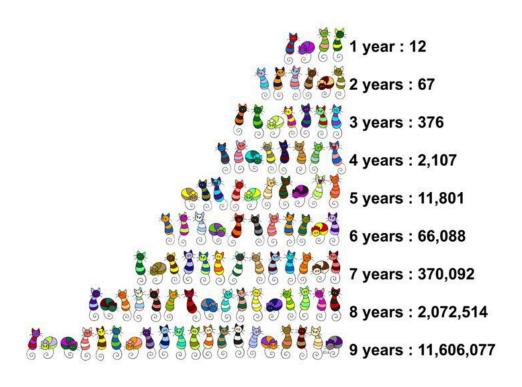
This chart shows the results one un-spayed female cat can have.

These additional spay/neuter procedures will ensure the Town of Addison can significantly reduce their homeless cat population!





An unspayed female cat, her mate, and all of their offspring producing 2 litters per year, with 2.8 surviving kittens per litter can total:





DALLAS CAT LADY SUPPORTS THE COMMUNITY IN A VARIETY OF OTHER WAYS TOO

*We have always helped Seniors/Low-Income households keep their pets via Food/Litter Donations & Vetting Assistance, but with Covid, we are helping even more people who are unable to work right now.

*Medical Care of Feral Cats (Dental, Emergency, Humane Euthanasia)

*With more people going back to work, record numbers of cats are being rehomed or abandoned and our intake of these cats is up significantly, resulting in additional expenses.

These grant funds will offset spay/neuter costs so we can continue our support in these areas also.

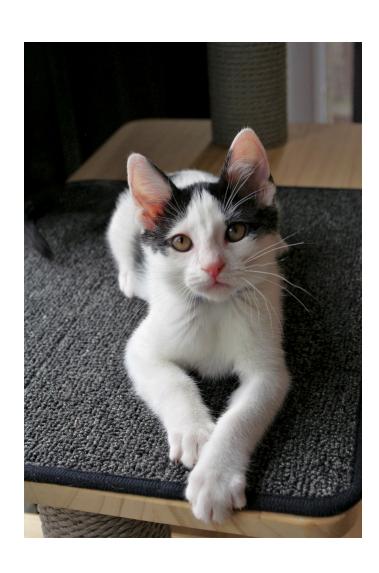




TNR and managed colonies help cities reduce:

- Homeless cat population
- Community complaints
- Staffing and financial resource needs







THANK YOU!

- www.DallasCatLady.com
- ► DallasCatLadyAdoptions@gmail.com



The Steven A. Cohen
Military Family Clinic
at Metrocare





METROCARE SERVICES



Since its founding 55 years ago, Metrocare has been on the front lines in the fight to bring accessible, high-quality mental health and developmental disability services to Dallas County's most vulnerable populations. We are the largest provider of mental health services in Dallas County, serving more than 54,000 adults and children annually. The need for mental health services has increased dramatically. Each day, Metrocare provides services to more than 2,700 individuals.

Throughout Metrocare's 13 locations and our broad array of community-based services, we provide primary and preventative care, mental health services, accessible pharmacies, housing, veteran services, day habilitation programs, re-entry support, crisis intervention, early childhood intervention and more. Metrocare's housing program, one of the largest in North Texas, focuses on permanent supportive housing for those facing behavioral health challenges. Alongside the clinical care, researchers and teachers from Metrocare's Altshuler Center for Education & Research train more than 200 health care professionals each year, advancing mental health beyond Dallas County, while providing critical workforce to the state.



COHEN VETERANS NETWORK



Founded by philanthropist Steven A. Cohen in 2015, Cohen Veterans Network was created to serve post-9/11 veterans (including those in the National Guard and Reserves) and military families through outpatient care at **Steven A. Cohen Military Family Clinics** throughout the country by focusing on improving mental health outcomes, especially those associated with post-traumatic stress.

The 501(c)(3) nonprofit foundation originated out of a need to support the veteran community as they begin their next mission:

healthy and happy lives.

THE NETWORK IS GROWING

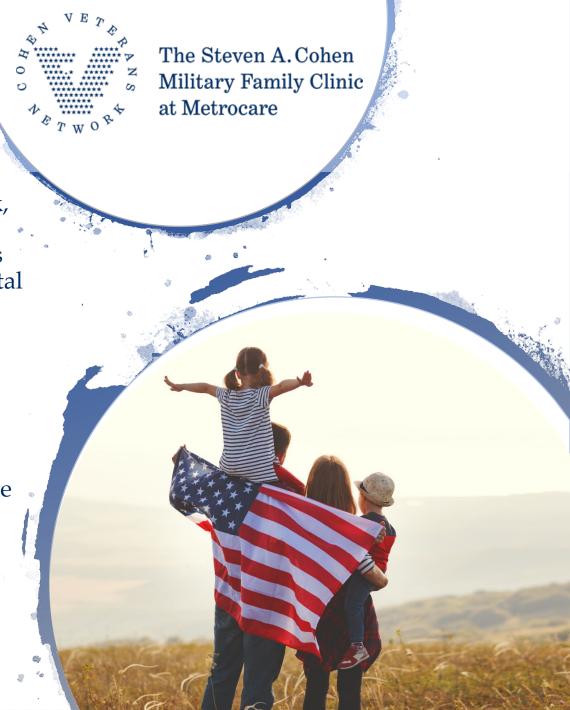




PARTNERSHIP

After a comprehensive search by Cohen Veterans Network, Metrocare Services was selected to manage a North Texasbased Steven A. Cohen Military Family Clinic. The clinic is located in Addison, TX and, since 2016, has provided mental health services for post-9/11 veterans and their families. This clinic complements care provided by the VA and provides support for:

- 1. Veterans who do not receive mental health care in the VA system
- 2. Veterans who are ineligible for care in the VA system (e.g., due to discharge status and/or conditions that are not service-connected)
- 3. Families of veterans & service members, including parents, siblings, spouses, partners, children, and others as defined by the veteran/service member
- 4. Active-duty service members







Problem

- Post-9/11 veterans are faced with long wait times to receive mental health care, due to high demand at VA.
- Post-9/11 veterans are faced with barriers to care if they were dishonorably discharged.
- · There is a lack of help for military families, like spouses, caregivers and children.

Solution

- If you are in crisis, the Cohen Clinic at Metrocare will see you the same day.
- The Cohen Clinic at Metrocare serves all post-9/11 veterans, regardless of role or discharge status.
- The Cohen Clinic at Metrocare serves the entire family, including parents, siblings, spouses or partners, children and caregivers.

*Individual therapy now available for activeduty service members with a TRICARE referral.



The Steven A. Cohen Military Family Clinic at Metrocare





CLINIC OUTCOMES



- In our 6th year, we served **942 unique individuals**, growing each year. Since inception, we have served over **3,040** active-duty service members, veterans and their families.
- We returned to in-person services but continue to offer virtual options for clinical sessions (therapy, medication, and case management) and community engagement (e.g., Mental Health First Aid and other workshops).
- As of June 2022, we have provided MHFA to 28 people with Town of Addison grant funding. Our next MHFA training will be in September.

SUPPORTING THE COMMUNITY



The Cohen Clinic at Metrocare opened its Community Room in November 2021. Since then, the multipurpose space has been used for a variety of community events.

- Mental Health First Aid Training
 - Suicide Intervention Training
- Stress solutions, kids' communication classes
 - Acting classes and theater auditions
 - Staff retreats

- Company training
- Peer groups meeting place
- Basic needs kit assembly
 - Toy drive
 - Canned food drive







CONTACT US

The Steven A. Cohen Military Family Clinic at Metrocare

16160 Midway Rd. #218, Addison, TX 75001 (469) 680-3500 metrocareservices.org/MFC

- f facebook.com/CohenMetrocare
- ©CohenMetrocare
- © @CohenMetrocare
- Cohen Veterans Network





Town of Addison Council Presentation

June 28, 2022







Our Mission

To provide programs for individuals, families, and seniors that lead to self-sufficiency and foster independence.

Our Core Values

Provide encouragement, hope, and a path to independence delivered with dignity and respect.

Be a rewarding place to work for individuals who are well-trained, experienced, professional, and compassionate.

Attract and retain volunteers who are dedicated and committed to serving their neighbors in need.

Addison Residents Served*

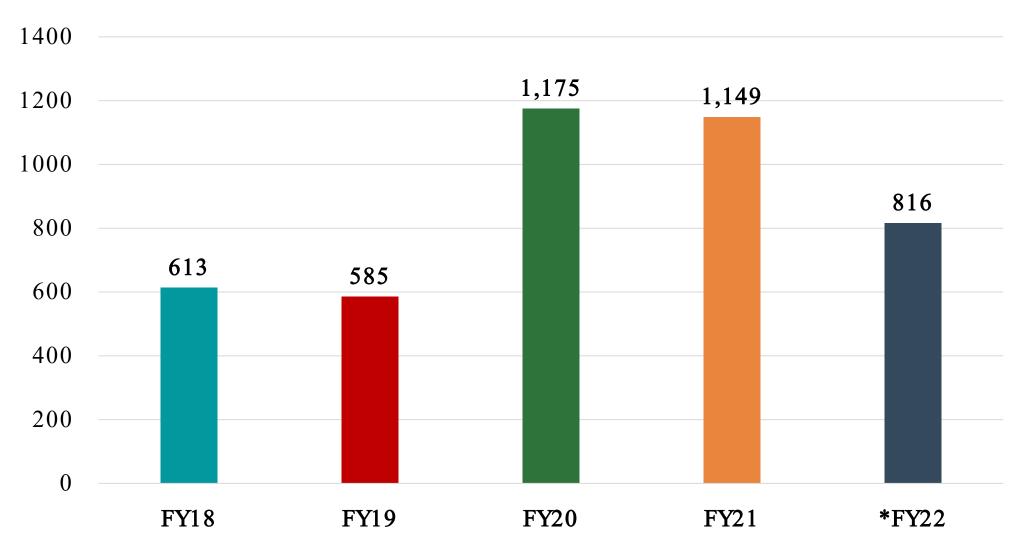




- Served 932 residents with 5,021 services
- \$320,505 in Emergency Rent and Utility Assistance provided to 161 families (15% increase in funds and 20% increase in families)
- **Average Rent provided was \$1,096 (33% increase)**
- **651 residents** visited the **Food Pantry 1,822 times**
- * 168 residents accessed 724 services through our Workforce Development Program
- * 140 residents received budgeting and financial coaching through our Financial Empowerment Program

Addison Residents Served FY18-22





Capital Campaign Update









Thank you!

Tracy Eubanks
CEO, Metrocrest Services
972-446-2100

teubanks@metrocrestservices.org



ADDISON

Outcry Theatre's Mission

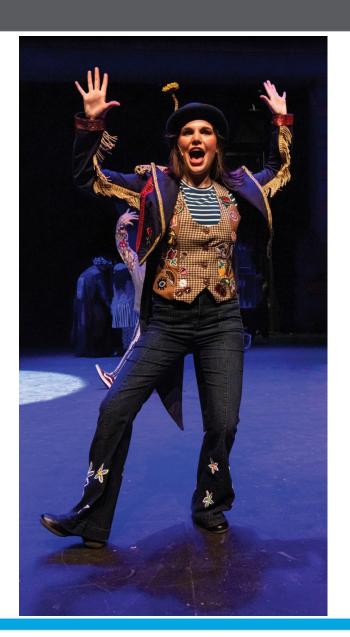


The mission of **Outcry Theatre** is to draw youth and young adults to the theatre as both audience and participants.

Outcry Theatre strives to integrate the arts into the lives of young people to encourage them to become lifelong artists and arts appreciators.

Outcry Theatre utilizes bold artistic vision, highly physical staging, and an energetic and visceral performance style.

With rigorous rehearsals, tenacious attention to detail, and unwavering dedication to excellence, **Outcry Theatre** focuses on developing stellar performances and exceptional storytelling.

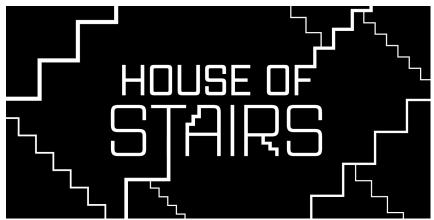


Outcry Theatre Professional









Outcry Theatre returned in 2022 after an over two-year hiatus due to the Covid-19 pandemic. *Lipstick Traces*, the first show back, was a critical success.

Outcry Youth Theatre







Outcry Youth Theatre serves ages 5-18 with approximately eight productions a year, summer camps, and classes. We offer challenging shows for our young actors, pushing them to learn and grow as both performers and people.

What Outcry Does for Addison





Brings participants and audience members from all over the Metroplex into Addison

Offers top notch youth theatre as well as professional productions

Provides free tickets to Addison residents, giving away a select number of tickets to each show

Teaches acting and theatre to local youth, developing them as actors and people

2021-2022 Season







Frozen Jr.
Cabaret
The Glass Menagerie
The Witches
The Diviners
Pippin
Charlotte's Web
Anna Karenina
Lipstick Traces

Coming soon:

Annie Jr.

The SpongeBob Musical

House of Stairs





Thank you so much for your support!

















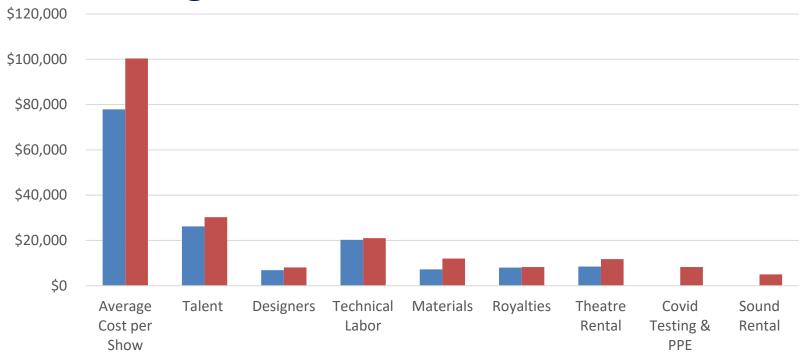


WaterTower Theatre Season 27

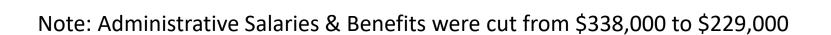




Average Cost Per Show 2019 vs. 2022

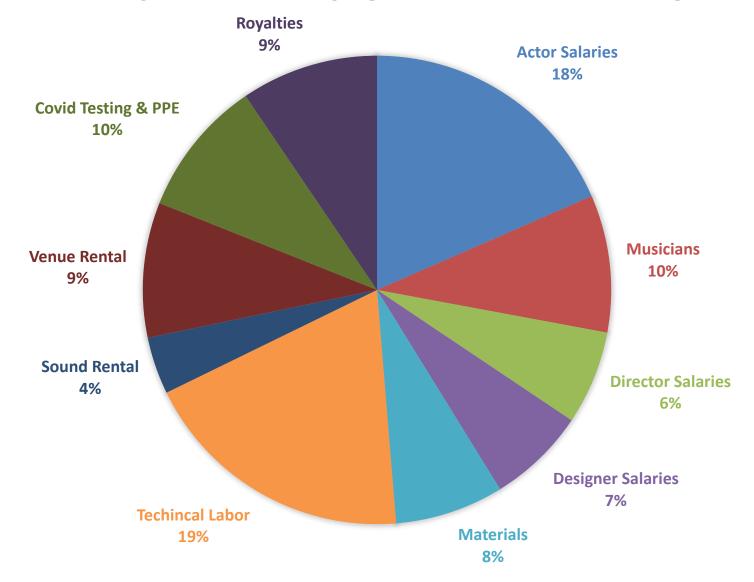








WaterTower Theatre Where your money goes – on the stage





Your investment & ROI

"A great city can't live without great performing arts!"

- The Honorable Mayor Joe Chow

WaterTower Theatre is a destination that brings visitors and commerce to Addison. Arts attendees spend an average of \$24.60 per person, not including the price of the ticket to the show.*

Current Season- **5000** audience members are expected to attend WaterTower productions, injecting around **\$123,000 dollars** into local restaurants and other businesses.

Next Season WTT is on trend to see a robust increase to upwards of **8000** audience members, increasing the resulting local spending to nearly **\$200,000** during Season 27!



^{*}Arts & Economic Prosperity IV report published by Americans for the Arts



Thank you for 27 years of professional live theatre!



ELLA'S SWINGING CHRISTMAS

A tribute to Ella Fitzgerald December 9-12, 2021



THE ODD COUPLE

By Neil Simon March 30-April 10, 2022



THE TAMING

By Lauren Gunderson October 13-24, 2021





Thank you!



WOVEN HEALTH

integrated community healthcare

Lisa Rigby Executive Director



Woven Health Clinic





Our Vision

Healthy Lives
Healthy Communities

Our Mission

To provide affordable, quality healthcare with a strong focus on preventing disease for low income, uninsured or underinsured people.

Woven Health Clinic



Cost Benefit 2021/2022

Total Number of Addison Visits450

Total Number of Unique Addison Residents Served: 180

Average \$ Value Per Resident Served: \$1,200

Total \$ Value of Services: \$216,000

2021/2022 City Funding \$5,000

Funding Per Resident Patient: \$28.00

Return On Investment: over 4,000%

Sick visits down, chronic disease visits increasing, mental health visits, increasing.

2021/2022 Outcomes - PREVENT Disease NOW!



2021/2022 Outcomes:

44% of Depression Patients in Remission

82% of Hypertension Patients Controlled

80% of Diabetic Patients Controlled

12% of Pre-Diabetic Patients now Normal

Cost Per Patient: \$600 per patient/per year for health services + \$600 per patient for pharmaceutical and vaccines.

Patient completes Health Assessment (HA) via Ipad

Physician reviews HA and other medical information. Creates Preventative Care Plan

PCP - Life Style Plan

Immunizations

PCP - Medical Plan

Screenings

Medications

Patient Physician Nurse – Care Coordinator

Prevention Care Team

Nutritionist
Licensed Clinical Social
Worker
Certified Medical
Assistants

Body Weight

Stress Mgmt

Nutrition/Diet

Sleep Hygiene

Physical Activity

Smoking Cessation

Patient Education, Self Management, Counseling

Treatment, Tracking, Referrals







Gold+ Status

>70% BP control rate, completion of 4 of 6 evidence-based BP activities.



Gold Status

>75% control for HbA1c

&

>70% Statin therapy or >70% BP control

Woven Health Clinic

Re-certified in 2021 National Committee of Quality Assurance Patient Centered Medical Home Recognition

Why Important?

- Stamp of quality Less than 7% of Texas clinics and physicians have received.
- Supports "team-based care"
- Leverages technology to improve outcomes
- Demonstrates a commitment to quality and quality improvement
- Has been proven to reduce health care costs, especially for people with complex chronic conditions
- Improves patient satisfaction



Woven Health Clinic



2021/2022 Highlights

- ✓ Positives
 - Majority are onsite visits, telehealth for sick visits
 - Health events are back
- ✓ Challenges
 - Inflation causing more people to drop health insurance, delay visits, and increasing stress
 - Clinic costs Vaccines up 25%, Supplies up 20%,
 - Staffing Shortage of health care workers and pay up 25%
- ✓ Opened a new Clinic in Carrollton June 2021

Status of Health Care in North Texas



- •COVID-19 more manageable: vaccines, positive tests decreasing; anti-viral is available less deaths
- •Mental health problems increasing anxiety, depression and stress.
- •Texas hospitals prepare to pick up the tab for uninsured COVID-19 patients as \$1.8 billion in federal COVID funds and elimination of \$2.5 billion in 1115 for uninsured Loss \$4.3 Billion
- •More uninsured are going to end up at ER at Hospitals, more deaths, more communicable diseases, less stable work force.

Health care crisis in North Texas will escalate quickly, impacting everyone in our community.











Your support saves lives.



Council Meeting 2.

Meeting Date: 06/28/2022 **Department:** City Secretary

AGENDA CAPTION:

Consider Action on the <u>Minutes from the June 7, 2022 Strategic Planning</u> <u>Retreat.</u>

BACKGROUND:

The minutes for the June 7, 2022 Strategic Planning Retreat have been prepared for consideration.

RECOMMENDATION:

Administration recommends approval.

Attachments

Minutes - June 7, 2022

DRAFT



SPECIAL MEETING OF THE CITY COUNCIL

June 7, 2022

ADDISON TREEHOUSE 14681 MIDWAY RD. SUITE 200, ADDISON, TX 75001 5:30 PM REGULAR MEETING

The Addison City Council conducted its Special Strategic Planning Meeting on Tuesday, June 17, 2022, at the Addison TreeHouse with a quorum of the City Council physically present. Limited seating for members of the public was available. Interested parties were able to make public comments and address the Council via emailed comments submitted to the City Secretary at iparker@addisontx.gov by 3:00 pm on the meeting day. The meeting was live streamed on Addison's website at www.addisontexas.net

Present: Mayor Joe Chow; Mayor Pro-Tempore Kathryn Wheeler; Deputy Mayor Pro-

Tempore Lori Ward; Council Member Tom Braun; Council Member Darren Gardner; Council Member Guillermo Quintanilla; Council Member Eileen Resnik

Call Meeting to Order: Mayor Chow called the meeting to order.

Pledge of Allegiance: Mayor Chow led the Pledge of Allegiance

SPECIAL MEETING

Discussion of Meetings / Events

Public Comment

The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.

Regular Items

1. Present and Discuss the Town's Strategic Plan and Goal Setting for Fiscal Year 2023.

Since 2016, the City Council has met annually to develop a Strategic Plan to provide direction and set priorities. Specific, measurable goals and priorities known as Pillars and Milestones are developed and revisited each year. These are adjusted as deemed appropriate by Council. Strategic Government Resources (SGR) has facilitated this annual review process with Council. The review included dividing the Council into two groups to discuss whether each Pillar was still relevant, determine whether progress is still being made on each Milestone and making adjustments or amendments as needed. Initiatives for the Milestones will be developed by Staff and will consist of projects that, when completed, help the Town achieve that specific Milestone. Recommendations were discussed by the entire Council with the following updates.

PILLAR ONE	2022 Innovative in Entrepreneurship and Business	2023 Innovative in Entrepreneurship and Business		
Milestone #1	Economic Development focus on attracting and retaining entrepreneurship, high-tech conferences, and Transit Oriented Development.	Attract and retain innovators in target industries.		
Milestone #2	Leverage the new Customs Facility to promote international travel use of the Airport	Leverage Addison's unique assets to grow and expand placemaking business programs and events that will set Addisor apart to attract talent and businesses.		
Milestone #3	Leverage the use of the Airport to maximize business growth and expansion	No Change.		
DILLAD TWO	2022 Exactlence in Asset Management	2023 Evacilance in Asset Management		
PILLAR TWO Milestone	Excellence in Asset Management Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems.	2023 Excellence in Asset Management No Change		
	Excellence in Asset Management Implement the Asset Management Plan in accordance with the Asset Management	Excellence in Asset Management		
Milestone	Excellence in Asset Management Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems. 2022	Excellence in Asset Management No Change 2023		

		T
	2022	2023
PILLAR FOUR	Gold Standard in Customer Service	Gold Standard in Customer Service
Milestone	Promote and protect Addison Way	No Change
	2022	2023
PILLAR FIVE	Gold Standard in Financial Health	Gold Standard in Financial Health
Milestone	Continue development and implementation of	No Change
	Long-Term Financial Plan.	
	2022	2023
PILLAR SIX	Gold Standard in Public Safety	Gold Standard in Public Safety
Milestone	Maximize use of cutting-edge technology to	Prepare for the impact of new growth and
	enhance public safety.	development in Addison.
	2022	2023
PILLAR SEVEN	Optimize Addison Brand	Optimize Addison Brand
Milestone	Define and promote Addison Identity	No Change

A resolution approving the seven (7) Strategic Pillars and ten (10) Milestones for the 2023 Addison Strategic Plan is scheduled for presentation at the June 28, 2022 Council meeting for Council action.

Adjourn Meeting

There being no further business to come before the City Council, Mayor Chow adjourned the meeting.

TOWN OF ADDISON, TEXAS

	Joe Chow, Mayor	
ATTEST:		
rma G. Parker, City Secretary		

Council Meeting 3.

Meeting Date: 06/28/2022

Department: City Secretary

AGENDA CAPTION:

Consider Action on a **Resolution Appointing Council Liaisons for Fiscal Year 2022-2023**.

BACKGROUND:

The Council Liaison appointments are typically made each year after the May General Election. Council Liaisons represent the Town by working with various organizations that provide public services to the citizens of Addison.

Appointments were discussed during the June 14th City Council Work Session. This resolution formalizes the appointments.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Council Liaisons 2022-2023

RESOLUTION NO. R22-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPOINTING COUNCIL LIAISONS TO ORGANIZATIONS FOR 2022-2023; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, each year the City Council appoints a Council Member to represent the Town and work with various organizations that provide public services to the citizens of Addison; and

WHEREAS, at the June 14, 2022 meeting, the City Council discussed appointments and directed Staff to present a Resolution at the June 28th Council Meeting to formally documents appointments for 2022-2023.

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

SECTION 1. The findings set forth above are incorporated herein for all purposes.

SECTION 2. The following Council Members are appointed to the funded organizations as described below:

ORGANIZATION – Funded	Mayor Chow	Mayor Pro-Tem Wheeler	Deputy Mayor Pro- Tem Ward	Council Member Braun	Council Member Gardner	Council Member Quintanilla	Council Member Resnik
Addison Arbor Foundation							X
Metrocrest Chamber of Commerce		X					
WaterTower Theatre				X			
World Affairs Council of Dallas/Fort Worth			X				

SECTION 3. The following Council Members are appointed to serve on Town Committees and unfunded organizations as described below:

ORGANIZATION – Funded	Mayor Chow	Mayor Pro-Tem Wheeler	Deputy Mayor Pro- Tem Ward	Council Member Braun	Council Member Gardner	Council Member Quintanilla	Council Member Resnik
Metrocrest Mayors Association	X						
North Dallas Chamber of Commerce						X	
North Texas Commission					X		
Regional Transportation Council/NCTCOG						X	

SECTION 4. This Resolution shall take effect upon its passage and approval.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the <u>28th</u> day of <u>JUNE</u> 2022.

Joe Chow, Mayor ATTEST: Irma G. Parker, City Secretary

TOWN OF ADDISON, TEXAS

Council Meeting 4.

Meeting Date: 06/28/2022 **Department:** City Secretary

AGENDA CAPTION:

Consider Action on a Resolution Appointing Janet Depuy, City of
Richardson Mayor Pro-Tem, as the Primary Representative and Guillermo
Quintanilla, Town of Addison Council Member, as the Alternate to the
Aggregated Position of Representative to the Regional Transportation
Council (RTC) of the North Central Texas Council of Governments.

BACKGROUND:

At the June 14, 2022 City Council meeting liaison positions for the various organizations were discussed. City Council Member Guillermo Quintanilla agreed to be reappointed as an alternate representative to the Regional Transportation Council (RTC) of the North Central Texas Council of Government. This resolution formally finalizes and records that appointment.

The Regional Transportation Council is a forty-four (44) member independent transportation policymaking body which determines how regional transportation funds should be spent. The municipalities of Richardson and Addison share one (1) representative. The City of Richardson and Town of Addison rotate the appointments and collaborate together to ensure the interests of both cities are represented. The two-year appoints are made every 2-years on even numbered years.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - 2022 RTC Appointments RTC - Appointment Notice Resolution - City of Richardson

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON APPOINTING JANET DEPUY TO THE AGGREGATED POSITION OF REPRESENTATIVE, AND GUILLERMO QUINTANILLA, JR. AS ALTERNATE TO THE AGGREGATED POSITION OF REPRESENTATIVE, TO THE REGIONAL TRANSPORTATION COUNCIL OF THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS, WHICH FRACTIONAL ALLOCATION MEMBERSHIP IS SHARED WITH THE TOWN OF ADDISON; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, regional transportation planning and improved mobility are goals of the Town of Addison, Texas;

WHEREAS, the Town of Addison and City of Richardson desire to have representation on the Regional Transportation Council and have agreed to share an aggregated position to serve a 2-year appointment and appointed in even numbered years;

WHEREAS, City of Richardson's Mayor Pro-Tem Janet DePuy and Town of Addison's Council Member Guillermo Quintanilla, Jr. have been appointed to represent their respective governmental entities on the Regional Transportation Council.

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

SECTION 1. That Janet DePuy, Mayor Pro-Tem of the City of Richardson, is hereby appointed as Primary Representative to the Regional Transportation Council of the North Central Texas Council of Governments for a term ending June 30, 2024.

<u>SECTION 2.</u> That Guillermo Quintanilla, Jr., Council Member, of the Town of Addison, is hereby appointed as Alternate Representative to the Regional Transportation Council of the North Central Texas Council of Governments for a term ending June 30, 2024.

SECTION 3. That this Resolution shall become effective immediately from and after its passage.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the $\underline{28^{th}}$ day of \underline{JUNE} 2022.

Joe Chow, Mayor

TOWN OF ADDISON, TEXAS

ATTEST:			
Irma G. Parker, City Secretary			



The Transportation Policy Body for the North Central Texas Council of Governments (Metropolitan Planning Organization for the Dallas-Fort Worth Region)

April 25, 2022

The Honorable Paul Voelker Mayor City of Richardson PO Box 830309 Richardson, TX 75083-0309

The Honorable Joe Chow Mayor Town of Addison PO Box 9010 Addison, TX 75001-9010

Dear Mayors Voelker and Chow:

The North Central Texas Council of Governments (NCTCOG) is the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area. The Regional Transportation Council (RTC), composed primarily of local elected officials, is the transportation policy body for the MPO. The RTC is responsible for direction and approval of the Metropolitan Transportation Plan, the Transportation Improvement Program, the Congestion Management Process, and the Unified Planning Work Program, and for satisfying and implementing federal and state laws and regulations pertaining to the regional transportation planning process.

Membership on the Regional Transportation Council is either by direct membership or group representation. Each seat on the Regional Transportation Council will be provided a primary member and permitted an alternate member. The Cities of Richardson and Addison share a seat on the Regional Transportation Council. The RTC's Bylaws and Operating Procedures state that the person representing a group of several cities shall be selected by the mayors using a weighted vote of the maximum population or employment of the cities represented, and the person selected shall serve a two-year term beginning in July of even-numbered years and shall be serving on one of the governing bodies they represent. A table containing population and employment figures is enclosed. The Bylaws further state that in the spirit of integrated transportation planning, all cities within a city-only cluster are eligible to hold the RTC membership seat for the cluster, and the cities should strongly consider rotation of the seat among the entities within the respective cluster. Items to consider when contemplating seat rotation may include: 1) a natural break in a member's government service, such as the conclusion of an elected term, 2) a member's potential to gain an officer position or advance through the officer ranks, 3) a member's strong performance and commitment to transportation planning, or 4) the critical nature of a particular issue or project and its impact on an entity within the cluster.

An alternate member is the individual appointed to represent an entity or group of entities on the Regional Transportation Council in the absence of the primary member. The alternate member must be predetermined in advance of a meeting and will have voting rights in the absence of the primary member. An entity or group of entities may elect to appoint its alternate member(s) from a pool of eligible nominees. The same requirements apply to alternate members as to primary members. If a primary member is an elected official, then the alternate member must also be an elected official; if a primary member is a non-elected individual, then the alternate member can be either a non-elected

individual or an elected official. A best practice for city-only clusters may be to appoint the alternate member from an eligible entity within the cluster that is not providing the primary member.

Your current primary representative on the RTC is Janet DePuy, Mayor Pro Tem, City of Richardson. Your current alternate representative is Guillermo Quintanilla, Jr., Mayor Pro Tem, Town of Addison. You may choose to keep your current representatives or appoint a new primary representative and/or alternate representative. All appointments, whether a reappointment or new appointment, must be received by June 30, 2022. Per the RTC Bylaws, the new two-year terms begin in July. Please email (VPruitt-Jenkins@nctcog.org), mail (P.O. Box 5888, Arlington, TX 76005-5888), or fax (817/640-3028) your correspondence to Vercie Pruitt-Jenkins of NCTCOG. Please note that your designations must be confirmed in writing by all entities included in this group. Once the appointments have been determined by weighted vote, confirmation of the primary and/or alternate member(s) will be provided to your group.

In addition, the Regional Transportation Council has established an Ethics Policy in accordance with Section 472.034 of the Texas Transportation Code. This policy applies to both primary and alternate RTC members, whether elected or non-elected. All RTC members must also adhere to Chapter 171 of the Local Government Code and to the Code of Ethics from their respective local governments and public agencies. Please remind your representatives to be cognizant of these policies and codes.

Please contact Vercie Pruitt-Jenkins at <u>VPruitt-Jenkins@nctcog.org</u> or 817/608-2325 if you have any questions. We look forward to hearing from you

Sincerely,

Theresa M. Daniel, Ph.D., Chair Regional Transportation Council Commissioner, Dallas County

VPJ Enclosure

cc: Janet DePuy, Mayor Pro Tem, City of Richardson (RTC Primary Member)
Guillermo Quintanilla, Jr., Mayor Pro Tem, Town of Addison (RTC Alternate Member)
Don Magner, City Manager, City of Richardson
Wes Pierson, City Manager, Town of Addison

RESOLUTION NO. 22-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS, APPOINTING JANET DEPUY TO THE AGGREGATED POSITION OF REPRESENTATIVE, AND GUILLERMO QUINTANILLA, JR. AS ALTERNATE TO THE AGGREGATED POSITION OF REPRESENTATIVE, TO THE REGIONAL TRANSPORTATION COUNCIL OF THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS, WHICH FRACTIONAL ALLOCATION MEMBERSHIP IS SHARED WITH THE TOWN OF ADDISON; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, regional transportation planning and improved mobility are goals of the City of Richardson; and

WHEREAS, the City of Richardson desires to have a representative on the Regional Transportation Council;

WHEREAS, Mayor Pro Tem Janet DePuy is presently serving as Primary Representative on the Regional Transportation Council; and

WHEREAS, Council Member Guillermo Quintanilla, Jr. is presently serving as Alternative Representative on the Regional Transportation Council;

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

SECTION 1. That Janet DePuy, Mayor Pro Tem of the City of Richardson, is hereby appointed to the Regional Transportation Council of the North Central Texas Council of Governments for a term ending June 30, 2024.

SECTION 2. That Guillermo Quintanilla, Jr., Council Member, of the Town of Addison, is hereby appointed as Alternate to the Regional Transportation Council of the North Central Texas Council of Governments for a term ending June 30, 2024.

SECTION 3. That this Resolution shall become effective immediately from and after its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Richardson, Texas, on this the 13th day of June 2022.

OF RICHAROS

CITY OF RICHARDSON, TEXAS

MAYOR

ATTEST:

CITY SECRETARY

Council Meeting 5.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Innovative in Entrepreneurship & Business

Milestones: Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Consider Action on a Resolution Consenting to the Change of Control of Westgrove Air Plaza I and Westgrove Air Plaza II ("Tenant") from MM Aviation Holdings, LLC to Westgrove Aviation Group, LLC, and Authorizing the City Manager to Execute the Consent of Landlord Confirming the Change of Control Agreement.

BACKGROUND:

Airport ground-lease Tenants Westgrove Air Plaza I, LLC (WAP-I), and Westgrove Air Plaza II, LLC (WAP-II) are jointly requesting the Town's consideration and consent to the change in the ownership and control of the respective Tenants, pursuant to the requirements of the ground leases.

WAP-I holds the ground leasehold interests located at 4570 Westgrove Drive at Addison Airport, as evidenced by that certain Memorandum of Lease dated November 7, 2018, Instrument No. 201800321616 filed in the Official Public Records of Dallas County, Texas ("OPR"). The ground lease was first entered into March 2, 1981, and is to expire February 27, 2044. WAP-II holds the ground leasehold interests located at 4700 Westgrove Drive at Addison Airport, as evidenced by that certain Memorandum of Lease dated January 20, 2015, Instrument No. 201500055583 filed in the OPR. Both entities are wholly owned and managed by MM Aviation Holdings, LLC whose address is 1800 Valley View Lane, Suite 300, Farmers Branch, TX 75234.

Subject to the Town's consent, Westgrove Aviation Group, LLC desires to acquire all the "membership" interest in WAP-I and WAP-II from MM Aviation Holdings, LLC as such is defined, constituted, and described in the respective Company Agreements dated April 14, 2014.

Westgrove Aviation Group, LLC is equally owned by Wilson & Malta Associates, Inc., Steve Wilson, president, and Westgrove Management, LLC, (by way of various related entities) managed by Ron Corcoran, president.

Mr. Wilson is best known to the Airport and the Town of Addison as the owner

and operator of Jet-10, an Addison airport-based aircraft charter, management, and sales company. Mr. Corcoran is the president of Essex Management, a professional management company specializing in the management of single-family and master-planned communities and their underlying homeowner associations. Jet- 10, Essex Management, and their related companies will occupy nearly sixty percent of the two ground-leased properties.

As provided for under the respective ground leases, as amended and modified, the Tenant may not sell, assign, or otherwise convey in any manner the leases without the Landlord's prior written consent. An assignment is deemed to occur when the person(s) who own or have voting control of fifty percent or more of the tenant (in this case WAP-I and WAP-II), ceases to own or have voting control of fifty percent or more of the tenant at any time over the lease term. Therefore, tenants WAP-I and WAP-II are requesting the Town give its consent to the change in control of the Tenant and authorize the City Manager to execute the Consent of Landlord and confirm the Change in Control Agreement attached as Exhibit A to the Resolution.

The city attorney has reviewed the Change in Control Agreement and Consent of Landlord and finds them acceptable for the Town's purposes. It is to be noted that the Consent of Landlord executed by the City Manager will be delivered in trust to the escrow agent administering this transaction between the parties, which agreement shall be fully executed by the parties at the closing of the transaction. The escrow agent will be instructed to provide the Town of Addison with a publicly recorded copy of the document for its records.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Change of Control Westgrove Air Plaza I and II Ownership of Westgrove Aviation Group, LLC Property Location

RESOLUTION NO. R22-__

CONSIDER ACTION ON A RESOLUTION CONSENTING TO THE CHANGE OF CONTROL OF WESTGROVE AIR PLAZA I AND WESTGROVE AIR PLAZA II ("TENANT") FROM MM AVIATION HOLDINGS, LLC TO WESTGROVE AVIATION GROUP, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSENT OF LANDLORD CONFIRMING THE CHANGE OF CONTROL AGREEMENT.

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

WHEREAS: Westgrove Aviation Group, LLC is purchasing all the membership interests in Westgrove Air Plaza I, LLC and Westgrove Air Plaza II, LLC from MM Aviation Holdings, LLC; and

WHEREAS: Pursuant to the terms and conditions of Tenant's respective ground leases, the Town of Addison as Landlord is required to grant its consent to such change of control of Tenant.

Section 1. The Change of Control is between MM Aviation Holdings, LLC and Westgrove Aviation Group, LLC 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.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of JUNE 2022.

TOWN OF ADDISON, TEXAS

	Joe Chow, Mayor	
ATTEST:		
Irma Parker City Secretary		

RESOLUTION NO. R22-

CONSIDER ACTION ON A RESOLUTION CONSENTING TO THE CHANGE OF CONTROL OF WESTGROVE AIR PLAZA I AND WESTGROVE AIR PLAZA II ("TENANT") FROM MM AVIATION HOLDINGS, LLC TO WESTGROVE AVIATION GROUP, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSENT OF LANDLORD CONFIRMING THE CHANGE OF CONTROL AGREEMENT.

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WHEREAS: Westgrove Aviation Group, LLC is purchasing all the membership interests in Westgrove Air Plaza I, LLC and Westgrove Air Plaza II, LLC from MM Aviation Holdings, LLC; and

WHEREAS: Pursuant to the terms and conditions of Tenant's respective ground leases, the Town of Addison as Landlord is required to grant its consent to such change of control of Tenant.

<u>Section 1.</u> The Change of Control is between MM Aviation Holdings, LLC and Westgrove Aviation Group, LLC a copy of which is attached to this Resolution as <u>Exhibit A</u>, 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.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28th day of JUNE 2022.

	Joe Chow, Mayor
ATTEST:	
Rv.	Irma Parker, City Secretary

- 3. Agreements; Affirmation by Company
- 3.1 The Company acknowledges and agrees that:
- 3.1.1 The Company, acquiring the Membership Interest shall be the Tenant and as Tenant under the Ground Leases, is expressly subject to and bound by, and bound to comply with all of the terms and provisions, duties, conditions, and obligations of tenant under of the respective Ground Leases.
- 3.1.2 No term or provision of this Agreement shall constitute a novation or otherwise be construed or be deemed to modify, alter, amend or change any term, provision or condition of the Ground Lease.
- 3.1.3 Any assignment or subletting, leasehold mortgage, or other conveyance or transfer of the Ground Lease or the Sublease by WAG continues to be subject to the prior written consent of the Town of Addison, Texas.
 - 3.1.4 The address of Assignee is:

Westgrove Aviation, LLC 4700 Westgrove Addison, Texas 75001 Attn: Steve Wilson Email: steve@jet-ten.com

With a copy to:

Friedman & Feiger, L.L.P. 5301 Spring Valley Road, Suite 200 Dallas, Texas 75254 Attn: Joy H. Phillips, Esq. Email: jphillips@fflawoffice.com

Dated:	
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	GROVE AVIATION GROUP, LLess limited liability company
By:	ephen Wilson, President
	VIATION HOLDINGS, LLC, s limited liability company
Ву:	Mehrdad Moayedi, Sole Member

2

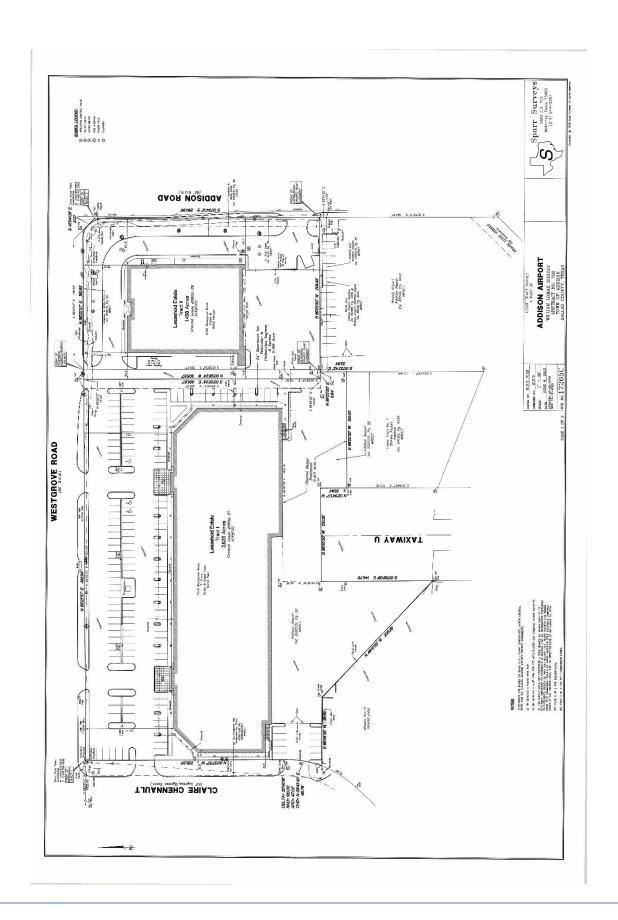
CONSENT OF LANDLORD

Subject to the Company's (as described above) compliance with the provisions contained herein, the Town of Addison, Texas, as Landlord under the above described Ground Leases, consents to the purchase of the Membership Interest as described above, solely for the purposes of compliance with the Ground Leases, this the ____day of _____2022, waiving none of its rights under the WAP-I Ground Lease or the WAP-II Ground Lease, and this Consent shall not operate as a waiver of the prohibition against further assignment, transfer or subletting without Landlord's prior written consent.

TOWN OF ADDISON, TEXAS

By:
Name:
Title: Authorized Agent for City Council
Ву:
Name:
Title: City Manager

3



SHARED RAMP EASEMENT	the great part of the control in the	And the control of th	ADDISON ARRORT SURVEYS MILAND TOWN STREET SURVEYS MILAND TOWN SURVEYS MILAND TOWN STREET SURVEYS MILAND TOWN S
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LEASEHOLD ESTATE TRACT I Ground Lease #080A-27 ALP#U21

BEING a tract of land situated in the William Lomax Survey Abstract No. 792, Town of Addison, Dallas County, Texas, being a part of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 in the Map Records of Dallas County, Texas (MRCCT), and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the intersection of the south line of Westgrove Road (60 foot right-of-way), with the east line of Claire Chennault (60 foot ingress and egress easement);

THENCE North 89 Degrees 25 Minutes 57 Seconds East, along the south line of said Westgrove Road, 492.94 feet to a "PK" nail set in concrete;

THENCE South 00 Degrees 28 Minutes 24 Seconds East, departing the south line of said Westgrove Road, 305.67 feet to a "PK" nail set in concrete;

THENCE North 89 Degrees 25 Minutes 50 Seconds East, 8.64 feet to a "PK" nail set in concrete;

THENCE South 00 Degrees 33 Minutes 42 Seconds East, at 9.00 feet passing a "PK" nail set in concrete at an interior corner of said Addison Airport, same being the northwest corner of the Blakely Airport Addition Replat, an addition to the Town of Addison according to the replat thereof recorded in Volume 85100, Page 4042 MRDCT, continuing along the west line of said Blakely Airport Addition Replat, in all a distance of 33.84 feet to a "PK" nail found;

THENCE South 89 Degrees 25 Minutes 50 Seconds West, departing the west line of said Blakely Airport Addition Replat, 150.05 feet to a "PK" nail found in concrete in the east line of said Taxiway U:

THENCE North 00 Degrees 34 Minutes 07 Seconds West, along the east line of said Taxiway U, 33.84 feet to a "PK" nail set in concrete at the northeast corner of said Taxiway U;

THENCE South 89 Degrees 25 Minutes 50 Seconds West, along the north line of said Taxiway U, 120.58 feet to a "PK" nail set in concrete at the northwest corner of said Taxiway U;

THENCE South 00 Degrees 39 Minutes 09 Seconds East, along the west line of said Taxiway U, 144.76 feet to a "PK" nail set in concrete;

THENCE North 46 Degrees 41 Minutes 09 Seconds West, departing the west line of said Taxiway U, 208.29 feet to a cut 'x' found in concrete;

THENCE South 89 Degrees 56 Minutes 35 Seconds West, 88.59 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the east line of said Claire Chennault and lying in a non-tangent circular curve to the left having a radius of 130.00 feet;

THENCE northeasterly, along the east line of said Claire Chennault and along said curve to the left, through a central angle of 20 Degrees 43 Minutes 19 Seconds, an arc distance of 47.02 feet and having a chord which bears North 09 Degrees 43 Minutes 43 Seconds East, 46.76 feet to a "PK" nail set in concrete;

THENCE North 00 Degrees 37 Minutes 57 Seconds West, along the east line of said Claire Chennault, 259.26 feet to the **POINT of BEGINNING** and containing 3.825 acres of land.

LEASEHOLD ESTATE TRACT II Ground Lease #080A-29 ALP#U23

BEING a tract of land situated in the William Lomax Survey Abstract No. 792, Town of Addison, Dallas County, Texas, being a part of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

BEGINNING at a "PK" nail set in concrete at the south end of a corner clip at the intersection of the south line of Westgrove Road (60 foot right-of-way), with the west line of Addison Road (60 foot right-of-way);

THENCE South 00 Degrees 34 Minutes 12 Seconds East, along the west line of said Addison Road, 290.66 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

THENCE South 89 Degrees 25 Minutes 50 Seconds West, departing the west line of said Addison Road, 208.45 feet to a "PK" nail set in concrete;

THENCE North 00 Degrees 28 Minutes 24 Seconds West, 305.67 feet to a "PK" nail set in concrete in the south line of said Westgrove Road;

THENCE North 89 Degrees 25 Minutes 57 Seconds East, along the south line of said Westgrove Road, 192.93 feet to a "PK" nail set in concrete at the north end of said corner clip;

THENCE South 45 Degrees 34 Minutes 08 Seconds East, along said corner clip, 21.21 feet to the **POINT of BEGINNING** and containing 1.458 acres of land.

24' WIDE EASEMENT FOR VEHICULAR & PEDESTRIAN INGRESS & EGRESS

BEING a tract of land situated in the William Lomax Survey Abstract No. 792, Town of Addison, Dallas County, Texas, being a part of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

BEGINNING at a "PK" nail set in concrete in the south line of Westgrove Road (60 foot right-of-way), from which a "PK" nail set in concrete at the north end of a corner clip at the intersection of the south line of said Westgrove Road, with the west line of Addison Road (60 foot right-of-way) bears North 89 Degrees 25 Minutes 57 Seconds East, 180.93 feet;

THENCE South 00 Degrees 28 Minutes 24 Seconds East, departing the south line of said Westgrove Road, 305.67 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

THENCE South 89 Degrees 25 Minutes 50 Seconds West, 24.00 feet to a "PK" nail set in concrete;

THENCE North 00 Degrees 28 Minutes 24 Seconds West, 305.67 feet to a "PK" nail set in concrete in the south line of said Westgrove Road;

THENCE North 89 Degrees 25 Minutes 57 Seconds East, along the south line of said Westgrove Road, 24.00 feet to the **POINT of BEGINNING** and containing 0.168 acre of land.

SHARED RAMP EASEMENT

BEING a tract of land situated in the William Lomax Survey Abstract No. 792, Town of Addison, Dallas County, Texas, being a part of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 in the Map Records of Dallas County, Texas (MRDCT), and being more particularly described as follows:

COMMENCING at a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the west line of Addison Road (60 foot right-of-way), from which a 1/2-inch iron rod found with plastic cap stamped "DAL TECH" at an interior corner of said Addison Airport bears South 00 Degrees 34 Minutes 12 Seconds East, 9.00 feet;

THENCE South 89 Degrees 25 Minutes 50 Seconds West, departing the west line of said Addison Road, 199.81 feet to a "PK" nail set at the **POINT of BEGINNING**;

THENCE South 00 Degrees 33 Minutes 42 Seconds East, at 9.00 feet passing a "PK" nail set in concrete at an interior corner of said Addison Airport, same being the northwest corner of the Blakely Airport Addition Replat, an addition to the Town of Addison according to the replat thereof recorded in Volume 85100, Page 4042 MRDCT, continuing along the west line of said Blakely Airport Addition Replat, in all a distance of 33.84 feet to a "PK" nail found;

THENCE South 89 Degrees 25 Minutes 50 Seconds West, departing the west line of said Blakely Airport Addition Replat, 150.05 feet to a "PK" nail found in concrete in the east line of said Taxiway U:

THENCE North 00 Degrees 34 Minutes 07 Seconds West, along the east line of said Taxiway U, 33.84 feet to a "PK" nail set in concrete at the northeast corner of said Taxiway U;

THENCE South 89 Degrees 25 Minutes 50 Seconds West, along the north line of said Taxiway U, 120.58 feet to a "PK" nail set in concrete at the northwest corner of said Taxiway U;

THENCE North 00 Degrees 39 Minutes 09 Seconds West, departing said Taxiway U, 49.36 feet to a "PK" nail set in concrete;

THENCE North 89 Degrees 26 Minutes 18 Seconds East, 262.15 feet to a "PK" nail set in concrete;

THENCE South 00 Degrees 28 Minutes 24 Seconds East, 49.32 feet to a "PK" nail set in concrete;

THENCE North 89 Degrees 25 Minutes 50 Seconds East, 8.64 feet to the **POINT of BEGINNING** and containing 0.413 acre of land.

Ownership Structure of Westgrove Aviation Group, LLC

Westgrove Aviation Group, LLC

Steve Wilson & Ron Corcoran Managers

50% 50%

Wilson & Malta Associates, Inc.

Steve M. Wilson, President

Westgrove Management, LLC

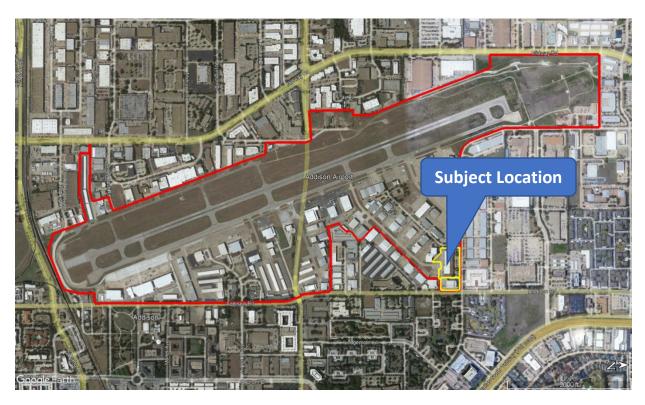
Essex Associates Management, L.P. Managing Member

Essex HOA Management, LLC General Partner

Ron Corcoran, President

Location of Subject Properties

Westgrove Air Plaza I, LLC (WAP-I) – 4750 Westgrove Drive Westgrove Air Plaza II, LLC (WAP-II) – 4700 Westgrove Drive





Council Meeting 6.

Meeting Date: 06/28/2022

Department: Parks & Recreation

AGENDA CAPTION:

Consider Action on a Resolution Approving a Concessionaire Agreement with Java and Hopps for Concession Services to be Provided at Addison Circle Park Pavilion and Authorizing the City Manager to Execute the Agreement.

BACKGROUND:

The Parks, Recreation and Open Space (PROS) Master Plan identified park activation as a game-changing initiative and identified Addison Circle Park and the development that will occur North of the DART Silver Line as a transformative project for the Addison Parks System. The PROS plan identified that the northeast entrance to Addison Circle Park should be updated to include a food vendor or vendors. The Economic Development Plan and Special Events Strategic Plan also support the initiative. As a result staff issued an request for proposal (RFP) in March of 2021 to identify a concession vendor. Following staff's recommendation Council awarded a contract to MD Circle Cafe in June of 2021. Unfortunately, the concessionaire was never able to open and provide services per the contract agreement and the Town issued Notice of Default to the vendor on November 15, 2021.

Staff since has issued another RFP on March 2, 2022 in which there were no responses. As a follow-up staff re-issued the RFP as #22-117 through Periscope on March 31, 2022 to solicit Concession Services for Addison Circle Park Kitchen and Pavilion. One vendor, Java and Hopps submitted a proposal. Staff reviewed the proposal to ensure it met the requirements included in the RFP. Staff also met with the business owners and, as a result, are bringing a resolution for Council Consideration to approve a contract for concession services at Addison Circle Park by Java & Hopps. The contract and proposal are attached to this agenda item. An overview of the terms of the proposal is listed below:

Monthly	\$500.00 monthly compensation until the concession is
Compensation	open and operational
	20% gross monthly receipts for concession revenue up to
	\$2,000.00
	10% of gross monthly receipts for concession revenue
	between \$2,001 and \$3,000

	5% of gross monthly receipts for concession revenue above \$3,000
Products Offered	Quick Service Food Items Coffee and Tea Ice cream Shaved Ice Popcorn Mini Donuts Dog Treats Beer and Wine Game Rentals Pavilion Rental
Hours of Operation	6 AM to 8 PM all days Hours / Days may adjust seasonally based on demand.
Use of Addison Businesses	Picnic Basket Offerings to include Local Addison Restaurant Menu Items. Will collaborate with local businesses to host networking events.
Concession Experience	Kiran Thota has 5 years of experience owning and operating frozen yogurt businesses Benjammin Gossman has 20 years of experience working in the restaurant industry.
Professional Appearance	Will enhance pavilion area to include additional seating, lighting, planters and heat lamps for colder months. Improvements will be reviewed by town staff and will require approval prior to implementation.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Concessionaire Agreement

Proposal - Java and Hopps

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONCESSIONAIRE AGREEMENT WITH JAVA & HOPPS FOR CONCESSION SERVICES TO BE PROVIDED AT THE ADDISON CIRCLE PARK PAVILION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Java & Hopps to provide concession services at the Addison Circle Park Pavilion for an initial term of one (1) year with an option to extend the term for up to four (4) additional one year terms in conformance with the Town of Addison's Request for Proposals No. 22-117 (the "RFP") contained in the agenda memorandum accompanying this Resolution.

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

<u>SECTION 1</u>. The City Council hereby approves the concessionaire agreement between the Town of Addison and Java & Hopps for concession services to be provided at the Addison Circle Park Pavilion in conformance with the above-referenced RFP which includes the contract, a copy of which is attached to this Resolution as <u>Exhibit A</u>. The City Manager is hereby authorized to execute the agreement.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **28th** day of **JUNE**, 2022.

TOWN OF ADDISON, TEXAS

	Joe Chow, Mayor	
ATTEST:		
Irma Parker, City Secretary		

Town of Addison, Texas Resolution No.



Concession Services for Addison Circle Park Pavilion

Bid # 22-117

Issue Date: March 31, 2022 Due Date: April 28, 2022

REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the Town of Addison, Texas, for:

Concession Services for Addison Circle Park Pavilion Kitchen

File with Wil Newcomer Purchasing Agent, Finance Department, 5350 Beltline Rd.

Addison, TX 75019. Proposals received later than 2:00 p.m. on April 28, 2022

will not be considered.

A copy of this Request for Proposal (RFP) may be obtained from Bid Sync at http://www.bidsync.com

The Town of Addison reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

A Service Provider response that indicates that any of the requested information in this RFP will only be provided if and when the Service Provider is selected as the apparently successful Service Provider is not acceptable, and, at the City's sole discretion, may disqualify the proposal from consideration.

The Town of Addison assures that no person shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Town of Addison further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, the Service Provider(s) ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

Dated this 31st day of March, 2022

Wil Newcomer Purchasing Agent 972-450-7091

Town of Addison, Texas Resolution No.

Background Information

Addison Circle Park (ACP) is a 10-Acre regional park located at 4970 Addison Circle in Addison, Texas. The park is owned and maintained by the Town and is located in the Addison Circle District. The park hosts national and regional recognized events such as Taste Addison, Kaboom Town and Oktoberfest. The park also hosts third party events such as 5K Runs, daily fitness classes and other programmed activities. Large lawn areas for gathering, walking paths, a splash pad and a water gardens attract daily visitors looking for fun and relaxation. ACP is adjacent to the DART Transit Center, which will include a stop for the DART Light Rail Silver Line which is currently being constructed.

The Pavilion is located at the northeast corner of the park adjacent to Quorum Rd. roundabout which contains Addison's most significant public art installation, Blue Prints, which was designed by artist Mel Chin and landscape architect Michael Van Valkenburgh. The modern architecture pavilion was designed by Cunningham and Associates and is located next to an interactive fountain that functions as a splash pad and at the top of the hour plays a song choreographed to music and color changing lights in the evening hours. Free Wifi, tables and chairs are provided for pavilion users. This RFP includes use of the following items located within the Pavilion - kitchen, grease trap and covered patio. The concessionaire will also have shared access to a public restroom at the pavilion. The proposer should not assume access and use of other areas in the park.

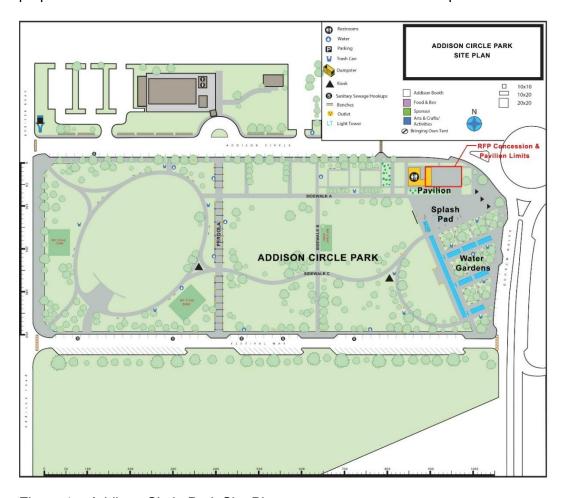


Figure 1 – Addison Circle Park Site Plan

Purpose and Background

This REQUEST FOR PROPOSAL (RFP) represents a publicly advertised and competitively awarded solicitation by the Town of Addison. The Town is seeking, and will select, a concessionaire that best demonstrates the ability to provide innovative, affordable and reliable products and services to park patrons. The Town wishes to increase the amount of time people use the park, attract more users to the park and positively influence the Addison Circle District. One component in realizing this goal is through concession offerings at Addison Circle Park Pavilion. This RFP covers operating concession services through the concession building located at the northeast end of Addison Circle Park. Applicants are encouraged to tailor concession offering products that would fit typical park users that come to Addison Circle Park and to offer products that may draw people to or encourage them to return to the park. Typical daily park patrons include participants in yoga, bootcamp and other fitness classes, participants in programmed activities, families enjoying the splash pad, trail users / walkers and people walking by the park to commute.

In additional to typical concession merchandise offerings could also include picnic baskets / boxes, smoothies, charcuterie boards and beverages. Seasonal offerings should also be considered and included in the proposal. The concessionaire may also propose renting out park equipment such as games and portable chairs etc. The proposal may include the sale of beer and wine but this would require approval by Town staff and would require the proper permitting be followed. The concessionaire may also rent out the pavilion's covered seating area for parties and gatherings as a source of revenue generation.

The Town will grant access to the selected concessionaire to use the concession building, grease trap and covered patio as illustrated in Figure 2. The Town will also grant access to an adjacent location where the vendor can locate a storage building.

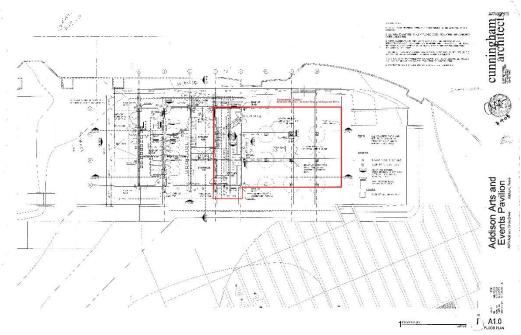


Figure 2 – Concession Limits (Enlargement provided in the Appendix of this document.)

The Kitchen is equipped with the following equipment:

Insert list of Kitchen Equipment:

Quantity	Equipment	Manufacture / Model Number
1	Portable Ice Bin	Lakeside
2	Portable Rolling Tables	
1	Hand Sink	Advanced Taboo
1	Three Compartment	
	Sink	
2	Stationary Tables	
1	Commercial Refrigerator	Traulsen Model #RHT132WUT-FHS
1	Commercial Refrigerator	Traulsen Model #RR132HUT-FHS
1	Table Warmer	Duke Model # EP4CBSS
1	Warming Drawers	Model #HDS-2
1	Grease Trap	
1	Mop Sink	

Performance Schedule

Concession Agreement award(s) will be for a (1) one-year period beginning May 25, 2022 with an option by the City to renew the agreement with the concessionaire on an annual basis for an additional (4) four years. The Town reserves the right to approve or disapprove any proposed business activity. The Town will not be liable for any expense or cost associated with the preparation and/or submittal of a Vendor's response to this RFP.

If you are awarded the Agreement for Concession Services at the Addison Circle Park Pavilion, concession rights may <u>NOT</u> be sold, transferred or given to anyone else without full disclosure to the Town of Addison and without obtaining prior written permitting from the Town.

In order to provide concession services, use of the Pavilion's Kitchen, Grease Trap and Covered Patio will be extended to the concessionaire and is offered on an as is basis. This agreement does not cover any other areas within the park. It is the responsibility of the applicant to visit the facility and verify that adequate water and electrical service is available to support any additional equipment and service they intend to operate. Any suggested modifications or improvements shall be at the sole expense of the successful bidder and will require advance written approval from the Town of Addison.

In consideration for the right and privilege to conduct business within Addison Circle Park at the Concession / Pavilion, the vendor must compensate the Town of Addison a Concession Fee an amount to be proposed in the RFP application process. Compensation must include:

- a flat Concession Rental payment of \$500 per month beginning May 25, 2022 will begin and will cease once concession services are operational.
- and a monthly Concession Fee payment of a percentage of gross monthly receipts for food / beverage sales, alcohol sales and rentals to be proposed in the concessionaire's RFP Submittal.

Note: A Concessions Agreement provides an on-site vendor the right to be included in the three major Special Events held by the Town. Special Event involvement may not necessarily be at the Park Pavilion. The location may be modified for the duration of the event to accommodate Special Event footprint needs of the event organizer. The

concessionaire may be asked to provide products that fit the theme of the event.

The Covered Patio is used for early morning and early evening yoga classes offered by Addison Outdoors. The Town will provide the concessionaire with a seasonal schedule of classes and will work with the instructor to make any needed minor modifications to the class schedule or location.

Contract Requirements and Fees

If your proposal is accepted, the following requirements will be due upon award, prior to issuance of your concession agreement:

1. Town of Addison Certificate of Occupancy

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, a Certificate of Occupancy for the Concession Building and have the business registered with the Town of Addison.
 - Certificate of Occupancy Information: https://addisontexas.net/econdev/register-my-business
 - Business Registration Information: https://addisontexas.net/econdev/register-my-business

2. Insurance Coverage and Proof of Policy

- The concessionaire/contractor shall obtain and maintain for the duration of the agreement, policies of comprehensive general liability insurance with combined single limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Texas.
- A \$2,000,000 products/completed operations aggregate is also required for contractors that prepare food.
- The insurance policy shall be written on an occurrence basis.

The Town of Addison shall be named as Additional Insured and a copy of the Additional Insured Endorsement naming the City as Additional Insurance shall be attached to the Certificate of Insurance. The Certificate of Insurance and Additional Insured Endorsement shall be filed with the City a minimum of two weeks prior to the contractor providing services.

3. Health Permit

• It will be the contractor's responsibility to contact, arrange and comply with specific Health Department requirements. A copy of an Addison Health Department permit must be provided prior to opening. It is the responsibility of the Vendor to verify adequate water, restroom and electrical service is accessible to support the equipment they intend to operate at a particular location. Any modifications or improvements to concession area(s) shall be at the sole expense of the successful vendor and will require advance written approval from the Town of Addison. For more information contact Sandra Long, Environmental Health Manager Town of Addison 972-450-2821 or slong@addisontx.gov.

4. Permitting and Zoning Entitlements for the Sale of Alcoholic Beverages

If the concessionaire / contractor intends to sell alcoholic beverages, it will be the concessionaire / contractor's obligation to apply for approval of a Special Use permit from the Town, and shall obtain all necessary permits, and pay all associated permit and license fees required by the Texas Alcoholic Beverage

Commission and the Town. Alcoholic Beverage sales shall be limited to onpremise consumption only and the concessionaire / contractor must achieve at least sixty percent (60%) of their gross revenues from the sale of food.

5. Contract Agreement (Not Lease)

• The contractor understands and agrees the Town will only grant concessions by contract and not by lease. Concession Agreement(s) will only confer permission to occupy and use the premises described for concession purposes. A successful contractor's expenditure of capital and/or labor in the course of use and occupancy will not confer any interest or estate in the premises by virtue of said use, occupancy and / or expenditure of money thereon. Town of Addison will only grant successful contractors an individual, revocable and non- transferable privilege of use in the premises for the concession granted. A sample, "Agreement for Concessions" is included for review.

6. Concession Fee

 Concession Fee of \$500 per month plus a percentage of sale is required until concession services are offered. After concession services are offered a concession sales percentage will be paid by the concessionaire to the town. The sale percentage will be determined through the RFP process and would be paid monthly.

Submittal Requirements

Proposals should be prepared simply, providing straight forward, concise descriptions of the applicant's capabilities to satisfy the requirements of the request.

Proposals must include the following:

- A description of the proposed equipment to be used for operation designating existing Town of Addison equipment that will be used and designating additional equipment that will be provided by the concessionaire;
- 2. A complete list and description of all product(s), services and seasonal offerings you intend to offer; Offerings, strategies and materials that use Addison businesses must be identified in the list
- A list of pavilion reservation rates offered and listing of any party packages that might be offered.
- 4. Visual aids/pictures describing business operations, proposed signage, menu boards and service equipment;
- Detailed information on the prices proposed for each service or product and any variation for non-routine services inclusive of Texas sales tax and any other applicable governmental charges;
- 6. Days and hours of operation; A brief overview of bidders' professional history that conveys their expertise and experience with the activity or service proposed:
- 7. A minimum of three references each for the following categories: business operations; financial stability; and customer satisfaction;
- 8. A statement outlining proposed compensation to the Town of Addison and how the payment schedule will be structured, and the company's documentation and reporting process for revenues and expenditures. Standard percentage based remittance ranges from 15-40% of gross receipts, before sales tax; Percentage based remittance should include remittance for Concession sales, alcohol sales, game / equipment rentals and pavilion rental.

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- Tenant improvements list any and all desired improvements. Include items such as power, water, security, and restroom needs, service area enhancements, customer seating, signage, storage, etc.;
 - It is to be understood that the <u>Pavilion's Kitchen, Grease Trap and Covered Patio is offered as is</u> and any modifications or improvements desired by the bidder shall be installed at the sole expense of the bidder and requires advance written approval by the Town. All improvements shall become the property of the Town of Addison upon completion of installation; provided the vendor shall be entitled to utilize the modifications and improvements in accordance with this Agreement while this agreement is in effect.
- 10. A description of on-site storage needs, if any. The Town will allow a storage container to be placed in the fenced yard directly adjacent to the Theatre.
- 11. Concessionaires history operating similar facilities. List length of experience, locations, and services offered.
- Applicants are encouraged to attend pre-bid at the site prior to submitting a proposal. The pre-bid meeting is April 12, 2022 at 11:00 AM.
- The successful bidder will be expected to abide by all State laws, County laws, Town Addison ordinances, and all business licensing requirements, Town of Addison insurance requirements, and State of Texas Department of Public Health Food Service requirements.
- The Town of Addison reserves the right to reject any and all proposals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.
- All proposals become the property of the Town of Addison.

Proposal Submittal Instructions

Please note: The following general requirements are mandatory for all proposals. Proposals submitted after the deadline date and time or lacking one or more of the following requirements will not be accepted.

- 1. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed *10MB*.
- 2. If paper proposals are being submitted, they must consist of one original and one copy.
- 3. Please include your name, business name, business address, email address, phone number and fax number.
- 4. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principle place of business, phone numbers and primary contact person.
- 5. The proposal must be signed by an official who is legally authorized to bind the organization.
- 6. Complete, sign and submit all RFP forms provided by the Department.
- 7. To be evaluated, a proposal must address all of the requirements contained within this RFP.
- 8. Provide all references and materials required by the RFP instructions within.

Questions: Questions regarding the RFP process, scope of work or evaluation process must be submitted in writing through BidSync and will be answered in a timely fashion. **Submittal Instructions:** Proposals must be received by no later than 2:00 p.m. on April 28,

2022 at the Addison Finance Building located at 5350 Belt Line Road Dallas, TX 75254.

Submittal Deadlines

The department's proposed schedule for review of the RFP's submittals and final selection of the contractor is as follows:

Issue RFP March 31, 2022 Pre-Bid Meeting April 12, 2022 11:00 AM Deadline to Submit Proposal April 28, 2022 2:00 PM Staff Review Proposals April 22 – April 26, 2022 Preferred Vendor Notified April 27, 2022 Proposal Brought to Council for Approval May 24, 2022 Concessionaire authorized to access the facility May 24, 2022 Concession Services to Begin No Later than June 21, 2022

Selection Criteria

A panel of City staff will review the qualified bids and qualifications as submitted in this RFP process. The panel will score the RFP submittals, determine the highest qualified applicants, conduct interviews as necessary, and make a final recommendation the City Council.

The criteria contained within the Submittal Requirements section above will be used to evaluate RFP submittals. Evaluation/review will be of proposals which:

- 1. Answer and complete the requirements detailed within;
- 2. Provide the best and most days and hours of operation;
- 3. Provide the best products and services to be offered to the public prices, quality and nutritional value;
- 4. Provide products and services which are complimentary to the existing uses of the park and its business neighbors;
- 5. Provide products, services and / or materials that utilize other Addison businesses.
- 6. Provide the most concession experience and meet or exceed the minimum number of positive business references required;
- 7. Meet professional appearance, quality of unit/business, and character/theme attributes;
- 8. Meet licensing and insurance requirements:
- 9. Provides satisfactory concession fee to be paid to the Town of Addison for the proposed business operations.

The Owner will consider Previous Experience, Proposed Concession Fees in conjunction with proposed operation for the concession facility along with other criteria requested of the offerors to determine which proposal offers the best value to the Owner. The proposals will be evaluated using the criteria weighting below:

Category	Selection Criteria	Score
А	Schedule – Days and Hours of Operation	10
В	Products / Services Offered	10
С	Previous Experience	20
D	Professional Appearance	10
Е	Ability to Meet Licensing and Insurance Requirements	10
F	Concession Fee	40 Points
Total Points		100

Selection Process

A selection committee will review all proposals, select finalists and may conduct interviews prior to making the final selection of the consultant. The City reserves the right not to award any portion or all of the project if it finds that none of the proposals submitted meets the specific needs of the project.

Prior to the commencement of work, the City and the selected vendor will meet to settle contract details. A letter notifying the vendor of the City's award will constitute notice to proceed. The City is not responsible for any costs incurred by the vendor in the preparation of the proposal. Once submitted to the City, all proposals will become public information.

Contract

Upon award the Vendor and the City will negotiate and execute a concessionaire agreement (the "Agreement") based upon the City's standard agreement terms. A sample standard concessionaire agreement has been provided herein as Exhibit A for reference.

EXHIBIT A

CONCESSIONAIRE AGREEMENT

This Concessionaire Agreement ("Agreement") is made by and between the **Town of Addison**, **Texas** (the "City") and **Java and Hopps** ("Concessionaire") (the City and Concessionaire are sometimes referred to herein together as the "Parties" and individually as a "Party").

Recitals:

WHEREAS, The City owns the Addison Circle Park Pavilion which is located within the City at 4970 Addison Circle, Addison, TX (the "Pavilion"). The Pavilion is managed by the City through its Department of Parks and Recreation Director (the Parks and Recreation Director, or Director's designee, being the "Manager"). A general diagram or depiction of the Pavilion is on file with the Manager and is attached hereto as **Exhibit B** and incorporated herein by reference.

WHEREAS, Concessionaire is the owner and operator of a recreation service and/or food and beverage service (the "Services") with its principal address located at 7112 Saint Phils St. Frisco, TX Concessionaire has the experience, skills, and capability to provide the Services set forth herein with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for others.

WHEREAS, Concessionaire has been approved by the City to provide food and beverage items along with rental of games and rental of the pavilion. Services at the Pavilion (the Pavilion being referred to herein as the "Facilities" except as set forth in Section 1 of this Agreement, below) and desires to provide the Services at the Facilities in accordance with this Agreement and the rules, regulations, standards, and polices of the City.

NOW, THEREFORE, for and in consideration of the privilege provided to Concessionaire of being allowed to operate a recreation service and/or food services within the Pavilion, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and subsequently detailed, the City and Concessionaire do agree as follows:

Section 1. Concessionaire Services.

A. Beginning July 1, 2022, Subject to the terms, conditions and provisions of this Agreement, Concessionaire shall provide food and beverage, rental of recreation equipment and games and / or rental of the pavilion space and / or recreation rental services ("Services") to persons or entities ("Users" and each a "User") who desire to use the Facilities, for recreation or dining, and including an event or an activity hosted by an entity other than the City ("Third Party Event"). Additionally, Concessionaire shall provide Services during events as may be scheduled from time to time by the City ("City Event"). A Third Party Event and a City Event are, for purposes of this agreement, each an "Event".

Town of Addison, Texas Resolution No.

- B. The City may modify, remove, add, and change the Facilities covered by this agreement at any time and in its sole discretion. If the City modifies, removes, adds, or changes the Facilities, the City will give written notice thereof to Concessionaire. After such notice is given to Concessionaire, the Agreement shall be applicable to those facilities included in the notice, and for purposes hereof the term Facilities shall include the facilities identified in the notice. At the City's request, the Parties shall execute a formal amendment to this Agreement identifying the Facilities included in the notice.
- C. The Concessionaire herby recognizes that the City produces City Events on scheduled dates each year. These scheduled events shall take priority over any other use, and concessionaire may not host private or Third Party Events during a City Event. Notice of City Events will be made available to Concessionaire at the City's earliest reasonable opportunity, as determined by the City, but no later than six (6) months in advance. During Events the covered outdoor Pavilion shall be made available for use exclusively by the City.
- D. The Concessionaire will be required to apply for a Special Events Permit with the Town for any gatherings that include 100+ people or live music / DJ. A Special Events permit will also be required if any gatherings expand past the Concession Limits, as illustrated in **Exhibit B**.

Section 2. <u>Term, Termination.</u>

- A. Unless otherwise terminated in accordance with this Agreement, this Agreement shall be in effect beginning July 1, 2022 (the "Effective Date") and shall continue in effect for a period of one (1) year thereafter (the "Term"). The City shall have the option to renew this Agreement for four (4) additional one (1) year terms upon written notice to Concessionaire at least thirty (30) days before expiration of the Term.
- B. If either Party hereto (the "Defaulting Party") fails to comply with or breaches any term or provision of this Agreement, the other Party (the "Non-Defaulting Party") may give written notice of such failure or breach to the Defaulting Party, and the Defaulting Party shall have not less than two (2) business days (or such longer period of time as may be set forth in the notice) from the time of the Defaulting Party's actual receipt of such written notice in which to cure such failure or breach (such period of time in which to cure being the "Cure Period"). If the Defaulting Party does not cure the failure or breach within the Cure Period, the Non-Defaulting Party may terminate this Agreement and give notice of such termination to the Defaulting Party. The term "business days" means Monday through Friday; but excluding any Monday through Friday that is any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Friday immediately thereafter, Christmas Eve, and Christmas Day.
- C. In addition, either the City or Concessionaire may terminate this Agreement for any reason or for no reason by providing to other Party at least 60 days prior written notice of such termination.

Section 3. Concessionaire Responsibilities; Prohibitions.

- A. Compliance with Laws. Concessionaire shall use its best efforts, skill, judgment, and abilities to perform the Services in accordance with the highest business standards in effect at the time of providing the Services (such standards being those then in place in the Dallas/Fort Worth metroplex area) and in compliance with all applicable federal, state, and local, laws, rules, regulations, codes, ordinances and orders (collectively, "Applicable Laws"). Concessionaire shall secure, maintain and comply with at all times any and all permits or licenses which may be required for Concessionaire to provide Services (or any portion thereof). Concessionaire shall not do or permit anything to be done at the Facilities or on any City property other than the provision of its Services.
- B. Compliance with Rules. Concessionaire shall provide and perform Services in accordance with all rules, regulations, standards, and policies approved or adopted by the City, City Department, or City officer or employee that are then in effect at the time Concessionaire provides Services ("Rules").
- C. Concessionaire Personnel Compliance with Laws, Rules, Standards. Without limiting the foregoing or any other provision of this Agreement, Concessionaire shall cause its owners, employees, representatives, agents, contractors, and subcontractors to comply with Applicable Laws and Rules. Concessionaire shall cause all of its employees, personnel and staff assigned by Concessionaire to perform any Services at the Facilities according to the highest standards of courtesy, service, and professionalism, including being dressed professionally and not drinking of alcoholic beverages while performing Services. Concessionaire shall provide adequate and competent supervision of its personnel and staff in the provision of the Services.
 - 1. Concessionaire shall be solely liable and responsible for any and all damages caused to any equipment, materials, or other property of the City or belonging to any third person, and for all injuries (including death) to any person, which are caused by any act or omission of Concessionaire or any Concessionaire Persons (as defined in Section10, below).
 - 2. The Manager has the right to bar any employees, personnel, and/or staff of Concessionaire from working at or in the Facilities if the highest standard of professionalism is not met in the Manager's sole opinion.
- D. Other Concessionaire Responsibilities. Among other duties and responsibilities of the Concessionaire and without limiting any provision of this Agreement, Concessionaire shall, on or before the Effective Date, provide the City a Five Hundred Dollar (\$500.00) refundable security deposit. The security deposit shall be refundable to the Concessionaire upon the termination of this Agreement. However, the City reserves the right to use any or all of the security deposit to perform any upkeep the Facilities may need to restore the Facilities to their same condition, minus normal wear and tear, on the Effective Date. The Concessionaire shall at all times:
 - 1. Leave the Facilities and all property of the City in at least as clean a condition as existed prior to the Concessionaire's entry on to the Facilities. Concessionaire

- shall immediately report to the Manager any damage to any equipment or other property at the Facilities.
- 2. Remove from the Facilities all trash and garbage generated by Concessionaire or in connection with the Catering Services and deposit the same in a lawful, appropriate trash or garbage receptacle located outside of the Facilities, to the satisfaction of the Manager.
- 3. Pay to the City the costs incurred by the City if the City is required to use its personnel or a third-party contractor to provide cleaning services for Concessionaire's failure to comply with the immediately above paragraphs 1 or 2. Such payment shall be made by Concessionaire within five (5) business days following Concessionaire's receipt of notice from the City regarding such payment.
- 4. Cause its owners, employees, representatives, contractors, and subcontractors to act professionally at all times (including, without limitation, no consumption of alcoholic beverages while providing Catering Services hereunder, and no smoking within the Facilities).
- 5. Conduct all of its Services activities in a manner that (a) does not disturb or interfere with activities or programs being conducted within the Facilities; (b) does not interfere with entry to or exit from a building, structure, or facility; and (c) does not interfere with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from the Facilities.
- 6. Keep all of its materials and equipment associated with the Services in a clean and good working condition.
- 7. Remove from the Facilities or secure all of its equipment and materials within the Facilities following the end of each day of operation. Inside storage of equipment and materials shall require prior written approval from the Manager.
- 8. Provide menus at Concessionaire's expense.
- 9. Promote the Facilities at appropriate times and through appropriate mediums and channels.

E. Prohibitions.

- 1. The cooking of food shall be predicated upon proper licensing and other required regulatory approvals. Any damages to facility or equipment will be the responsibility of the Concessionaire.
- 2. Concessionaire shall not make any changes or alterations to the Facilities without written the prior written consent of the Manager.

Section 4. Facility Responsibilities; Prohibitions

- A. *Cleanliness*. Concessionaire is responsible for the overall cleanliness of the Facilities before, during, and after each day of operation. City staff is not required to bus tables or assist with food and beverage service.
- B. *Janitorial Service*. Janitorial service will be provided by the City for the adjacent restroom facility, only. All other areas will be the responsibility of the Concessionaire.
- C. *Marketing*. The Town will cross promote/market the Concessionaire through social media. The Concessionaire will be allowed to display and distribute promotional collateral materials, printed at Concessionaire's cost.

Section 5. <u>Inspection; Space Sharing; Risks, Release.</u>

- A. Inspection. The Manager (and other personnel of the City) shall have the right at all times to (i) inspect the food and beverages provided or to be provided by Concessionaire in the Facilities and to reject any such food and beverages which the Manager determines do not comply with the terms of this Agreement, (ii) inspect all equipment, materials, and wares to ascertain proper state of repair and appropriate quality.
- B. Sharing of Space. Concessionaire and Manager may agree at any time to secure space for Concessionaire to store inventory and equipment. If Concessionaire chooses to store its inventory and equipment, Concessionaire does so at Concessionaire's sole risk, and the City is not and shall not be responsible for any lost, stolen or damaged goods or inventory stored by Concessionaire.
- WITH RESPECT TO THIS AGREEMENT AND C. Risks; Release. CONCESSIONAIRE'S PROVISION OF CATERING SERVICES AT THE FACILITIES, CONCESSIONAIRE DOES HEREBY AGREE TO AND ASSUME ANY AND ALL RISKS ARISING FROM OR OUT OF THE SERVICES AT THE FACILITIES, INCLUDING ANY INCIDENT, ACTION, ACCIDENT, LOSS, HARM, INJURY (INCLUDING DEATH), OCCURRENCE OR ACTIVITY OCCURRING ON OR WITHIN THE FACILITIES THAT MAY AFFECT CONCESSIONAIRE OR ANY CONCESSIONAIRE PERSONS (AS DEFINED IN SECTION 10, BELOW) IN ANY MANNER WHATSOEVER, AND DOES HEREBY RELEASE, WAIVE, ACQUIT, AND FOREVER DISCHARGE THE CITY AND ALL ADDISON PERSONS (AS DEFINED IN SECTION 10, BELOW) FROM, AND DO COVENANT NOT TO SUE THE CITY AND ALL ADDISON PERSONS (OR ANY OF THEM) FOR, ANY AND ALL CLAIMS, LIABILITY, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, ACTIONS, CAUSES OF ACTION, FEES, FINES, PENALTIES, EXPENSES, OR COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES AND COURT COSTS) WHATSOEVER FOR OR RELATED TO ANY ILLNESS OR INJURY OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DEATH), OR ANY DAMAGE TO OR DESTRUCTION OF ANY PROPERTY, OR ANY OTHER HARM OR

Town of Addison, Texas Resolution No.

LOSS WHATSOEVER, (COLLECTIVELY, "DAMAGES"), WHICH MAY BE SUSTAINED OR SUFFERED BY CONCESSIONAIRE OR ANY CONCESSIONAIRE, INCLUDING, WITHOUT LIMITATION, ANY AND ALL DAMAGES WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR INPART, THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Section 7. <u>Alcoholic Beverages.</u>

- A. Required Permits, Licenses, Registrations. For Services including alcohol, Concessionaire warrants, represents, and agrees that Concessionaire and all individuals assigned to provide alcohol-related Services will obtain and maintain, at Concessionaire's sole cost, any and all approvals, licenses, filings, registrations and permits required by Texas Alcoholic Beverage Commission ("TABC").
- B. City Approvals and Procedures. Concessionaire represents, warrants and agrees that alcoholic beverages will be served and sold in connection with its Services only (a) when service of alcohol has been approved in writing by the City prior to the service, and (b) in compliance with all Applicable Laws and Rules.
- C. Certified Training. Concessionaire will require that all employees or other personnel of Concessionaire serving alcoholic beverages in connection with its Services have prior TABC certified server training and shall provide proof of training to the City in connection with any of its Catering Services.

Section 8. Services Commission, Payment.

- D. Beginning on the effective date, the Concessionaire shall pay a monthly rental fee of Five Hundred Dollars (\$500.00) to the City on or before the 1st of each month until the concession is open and operational. The concessionaire will also pay 20% of gross monthly receipts for concession revenue up to \$2,000.00, 10% for gross monthly receipts for concession revenue between \$2,001 and \$3,000 and 5% for all gross monthly receipts above \$3,000 before sales tax, on all sales. Monthly receipts include revenues from all operations of Concessionaire including related equipment rentals from the preceding month for all operations hereunder. The term "receipts" means entire receipts from concessions of every kind, whether on credit or cash, from the business hereunder, not to include sales tax.
- E. The Utility Fees (electricity and water) will be billed to the Concessionaire quarterly. The Utility Fees are due on or before the 10th day of the month following the month during which the Utility Bill was received by Concessionaire.
- F. Should payment not be received on or before the 1st of each month, concessionaire agrees to pay a late fee equal to \$25.00 and No/100 dollars (\$25.00) for each day late after the 10th day of the month.

G. Concessionaire shall maintain an adequate set of bookkeeping records, from which the City may readily determine whether Concessionaire is making payments required hereunder. City may inspect and audit the books of account and records at all reasonable times; the time of such inspections and audit to be at the discretion of the City.

Section 9. <u>Insurance.</u>

- A. In connection with this Agreement and at all times relevant hereto or in connection herewith, Concessionaire shall acquire and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:
 - 1. Commercial General Liability insurance, with combined single limits of not less than \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury; and a \$1,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations (and if such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Catering Services under this Agreement);
 - 2. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form;
 - 3. Liquor Liability insurance with minimum limits of \$2,000,000 per each single occurrence, covering Concessionaire's potential liability to any person, including without limitation its invitees, customers, or any other person, for each Event for which Concessionaire serves or provides alcoholic beverages.
- B. With reference to the foregoing insurance requirement, Concessionaire shall specifically endorse applicable insurance policies as follows:
 - 1. The Town of Addison, Texas shall be named as an additional insured with respect to all liability policies (and including, without limitation, to products/completed operations coverage in the Commercial General Liability insurance policy).
 - 2. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
 - 3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
 - 4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any change in the insurance coverage that

would bring such coverage below the minimum amounts required by this Section.

- 5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- 6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- 7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- 8. Concessionaire may maintain reasonable and customary deductibles.
- 9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Concessionaire and the Town of Addison prior to the commencement of any Catering Services by Concessionaire hereunder (and the same shall be updated and new certificates of insurance prepared, executed and delivered to reflect the renewal and/or continuing coverage of such insurance), and shall:
 - 1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
 - 2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.
- D. Upon request, Concessionaire shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.
- Concessionaire's Indemnity Obligation. Section 10. CONCESSIONAIRE COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO ADDISON), INDEMNIFY, AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, THE PAST, PRESENT AND FUTURE ELECTED AND APPOINTED OFFICIALS, AND THE PAST, PRESENT AND FUTURE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE SAID TOWN OF ADDISON, TEXAS, ELECTED AND APPOINTED OFFICIALS. **AND** OFFICERS, EMPLOYEES, REPRESENTATIVES, VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON

PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE TOWN OF ADDISON, TEXAS AND/OR ANY OTHER ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) THE CATERING SERVICES TO BE PROVIDED CONCESSIONAIRE PURSUANT TO THIS AGREEMENT AS DESCRIBED IN SECTION 1, ABOVE, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY CONCESSIONAIRE UNDER THIS AGREEMENT, (III) ANY PERSONAL INJURIES (INCLUDING BUT NOT LIMITED TO DEATH) TO ANY CONCESSIONAIRE PERSONS (AS HEREINAFTER DEFINED) ARISING OUT OF OR IN CONNECTION WITH THE CATERING SERVICES, AND/OR (IV) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY CONCESSIONAIRE OR BY ANY OF ITS OWNERS, DIRECTORS, OFFICERS, PARTNERS, MANAGERS. EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, LICENSEES, SUBLICENSEES, OR ANY OTHER PERSON OR ENTITY FOR CONCESSIONAIRE IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, LICENSEES, CUSTOMERS, **SUBLICENSEES** (COLLECTIVELY, "CONCESSIONAIRE PERSONS"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, CONCESSIONAIRE'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (EXCLUDING DEFENSE FEES AND COSTS) EOUAL TO THE ADDISON PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LIKEWISE, CONCESSIONAIRE'S LIABILITY FOR ADDISON 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 PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

CONCESSIONAIRE SHALL PROMPTLY ADVISE THE TOWN OF ADDISON IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON RELATED TO OR ARISING OUT OF CONCESSIONAIRE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONCESSIONAIRE'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS'

OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONCESSIONAIRE OF ANY OF ITS OBLIGATIONS HEREUNDER. THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 11. Notice.

A. For purposes of this Agreement, notices provided for herein shall be in writing, addressed as provided hereinafter to the Party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally forty-eight (48) hours after deposit in the United States mail if sent by mail and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier.

Addresses for the giving of notice are as follows:

To the City:

Town of Addison
5300 Beltline Road
Addison, Texas 75254
Attn: Director of the Department of Parks
and Recreation

To Concessionaire:

Java and Hopps
Attn: Benjamin Gossman
7112 Saint Phils Street
Frisco, TX 75035

B. The addresses and addressees in this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

Section 12. Miscellaneous.

- A. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to its conflict of laws principles. Each Party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each Party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper. Venue for any suit, action, or legal proceeding under or in connection with this Agreement shall lie exclusively in Dallas County, Texas.
- B. *Independent Contractor*. In providing or performing Catering Services, Concessionaire is an independent contractor, and nothing in this Agreement creates, nor shall be

construed to create, an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow Client to exercise discretion or control over the manner in which Concessionaire performs the Catering Services which are the subject matter of this Agreement. Concessionaire is solely responsible for all labor and expenses in connection with its Catering Services provided under or in connection with this Agreement, and for any and all damages, injuries, liability, or other harm of whatever nature caused by, arising out of, or resulting from any act or omission of Concessionaire or of any Concessionaire Persons (as defined in Section 10, above).

- C. Assignment; No Third Party Beneficiaries. Concessionaire shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City, which may be withheld in the City's sole discretion. Any Conveyance of any kind or by any method without the City's prior written consent shall be null and void.
- D. Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Concessionaire shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.
- E. This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
- F. Entire Agreement; Changes and Amendments. Except as otherwise provided in this Agreement, this Agreement represents the entire and integrated agreement between the City and Concessionaire with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Except as otherwise provided in this Agreement, this Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Concessionaire.
- G. Severability. The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this 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 thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement; and in lieu of such severed provision there shall be added automatically as a part of this Agreement a provision as similar in its terms to such void, illegal, unenforceable, or conflicting provision as may be possible and that will be legal, valid and enforceable.

- II. Incorporation of Recitals, Exhibits. The Recitals to this Agreement set forth above, and all exhibits referenced herein and/or attached hereto, are incorporated herein and made a part of this Agreement for all purposes.
- I. No Waiver of Immunity. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.
- J. Remedies; Waivers. Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either Party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either Party may elect. The exercise of any remedy or right by either Party shall not be deemed an election of remedies or rights or preclude that Party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving Party.
- K. Headings; Includes. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- L. *Authorized Persons*. The undersigned representatives of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

SIGNATURE PAGE TO FOLLOW ON NEXT PAGE

Town of Addison, Texas Resolution No.

EXECUTED to be effective as of the Effective Date as described herein.

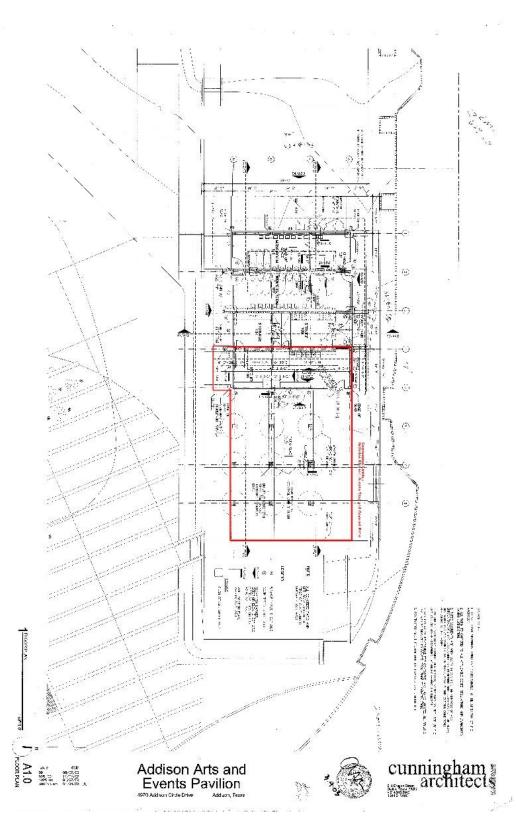
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CONCESSIONAIRE

By: Wesley S. Pierson, City Manager	By: Benjal Har
Date of signing:	Date of signing: 6/17/22

Appendix

CONCESSION LIMITS



Java & Hopps Proposal for Bid #22-117







Executive Summary

<u>Vision</u>: Our Big Idea is to connect, serve and interact with all visitors of the Addison Circle Park, Residents of the Town of Addison, and the surrounding communities. We will provide outstanding and interactive services that will increase park visitation and provide yet another reason to return to Addison.

<u>Mission</u>: We strive to become the recognized vendor for locally sourced snacks, beverages, soft serve treats and outdoor recreational activities at the Addison Circle Park.

Purpose:

✓ To provide outdoor activities throughout the year while connecting, serving, and interacting with all visitors of the Addison Circle Park including all residents of the Town of Addison, and surrounding communities.

AND

✓ Host several events each month and partner with local businesses to either provide an entertainment service or market and sell a local product to the visitors of the park.

Need-gaps:

Park Visitor Needs:

- 1. Readily accessible outdoor activities for adults
- 2. Family friendly outdoor activities.
- 3. Outdoor activities & events available throughout the year.
- 4. Food & Beverage vendor for quick snacks, beverages, and grab & go items.

Park & Community Needs:

- 1. Aesthetic enhancement of the pavilion patio area.
- 2. Outdoor corporate or company events & other outdoor activity management.
- 3. Outdoor games & activity rentals
- 4. Activity schedule beyond the Town of Addison annual events.

Solution: Addison Circle Park

- ✓ Pavilion Kitchen and Patio enhancement: We plan to procure several picture worthy aesthetic enhancement features for the pavilion patio along with several pieces of kitchen equipment to prepare the offered menu items.
- ✓ **Menu Items:** Picnic Baskets, Snacks, Grab & Go Food, Sweets, Treats, Packaged Drinks, Beer and Wine, Local Addison Circle Restaurant Menu items (Taste Addison Circle) and Local Dallas area restaurants catering food items to be sold during special events
- ✓ **Picnic Baskets Taste Addison Circle:** Local Addison Circle Restaurant Menu items to be sold in a picnic baskets or catered (Pre-Ordered and delivered)
- ✓ Adult Activities: We will offer <u>outdoor games</u> like Cornhole, Croquet, Giant Lawn Jenga, Competitive Activity Events along with <u>outdoor activities</u> like Picnic Date in the Park, Paint in the Park, Arts & Crafts, Wine Tasting, Outdoor Movies, Live Music, Pet Events, Happy Hours, How to Events, BBQ Cook Off, etc.
- ✓ Family Oriented Activities: We will offer family friendly <u>outdoor games</u> like Giant Lawn Jenga, Mini-Golf, Soccer, four-square along with <u>outdoor activities</u> like Family Picnic in the Park, Scouting or Co-ed Activity events, Day Camping, Activities @ the Fountains, Arts & Crafts, Birthdays, Pokémon Go interaction etc.
- ✓ **Local Business Collaboration:** Our idea is to bring local business within the Town of Addison Office towers into the park for networking events or company outings/team building activities.



Business Plan

Objectives: We aim to offer weekend and weekday park events, food and beverage items and outdoor activities throughout the year to all park visitors.	
Compensation to Town of Addison: Compensation to Addison for the rental of the kitchen shall be percentarent based on the sales before salestax. That percentage will be 20 % of all sales up to \$2000 then 10% to \$ and 5% there after per month. We shall also be responsible for utilities, trash, and upgrades to existing area will also purchase and control rental games for the park. We will install allowed seating, climate systems, to and security cameras with in the pavilion. All upgrades will become property of the park.	3000 a. We
Additional responsibilities- any excess trash beyond normal use will be the responsibility of java & hopps during Addison events stanchions will be used to help with crowd control.	
Golf cart will be parked by trash area when not in use	

Keys to Success -Addison Circle Park

- 1. Pavilion Menu Items and special event catering.
- 2. Picnic Baskets Taste Addison Circle.
- 3. Adult Activities.
- 4. Family Oriented Activities.
- 5. Addison Circle Annual Events.
- 6. Local Business Collaboration.

Products and Services Summary:

quick service food items dog treats beer and wine game rentals pavilion rental center

Addison Circle Annual Events

Our Big Idea is being the vendor at the park entrance providing snacks, refreshments and activities that provide a great introduction to all Town of Addison events hosted at the Addison Circle Park.

Local Business Collaboration

Our Big Idea is to bring local business within the Office towers into the park for networking events or company outings/team building activities.

Rental prices:

Hourly rate for party rentals will be \$200 per hour with 2 hour minimum. It will include 2 cases of water, trash removal, 50% discount on game rental *prices may vary due to demand

Hours of Operation: Current open hours will be from 6 am to 8pm all days *times will vary due to demand and season

Insurance: COI will be produced to the town of addison listed

Who are we

Kiran Thota

Mr . Thota has started his career as a Data Analyst at a fortune 500 financial company and has extensive knowledge in Finance and Risk Management. He has grown into the Senior Manager role and has a great experience in driving business solutions and assessment of risk along with providing great insighs to the business through data analysis techniques. He has been investing in multiple retail businesses and has 5 years of experience owning and operating business that sells frozen yogurt through automated vending machines. He also had experience partnering with his family owned Indian restaurant 'Hyderabad House' in Memphis Tennessee.

Benjamin Gossman

Mr. Gossman started his career as a chef in New Orleans at the Hyatt regency hotel and convention center. Mr. Gossman helped manage the offsite catering functions for the hotel. The tasks that Mr. Gossman was involved in included, moving, and setting up a mobile catering kitchen, preparing food, platting and clean up at event venues within the city's tourist locations. Mr. Gossman did these functions from for a convention with a total of 5000 people at one high-end event to small groups of 50 to 100 attendees. During Mr. Gossman career as a chef, he works in several restaurants' brands such as: bravo restaurants, Copeland restaurant group, and the Oceanaire Seafood Room. Mr. Gossman has studied under several chefs throughout his Twenty-Year career. During the 8 years Mr. Gossman spent with the Oceanaire Seafood Room, Mr. Gossman was the executive Sous Chef for following Oceanaire Seafood Room locations; DC, Baltimore, and New Jersey. Mr. Gossman was then moved to Dallas where he was awarded the Executive Chef position at the premier Dallas/Galleria location which did upwards of 10 million in annual sales. Some of the Executive Chef Duties would include Hiring and management of Kitchen Staff, Daily Menu design and preparation, ordering and receiving of all Food & Beverage product orders, and oversight of all quality control of food and service coming out of the kitchen.

Most recently, Mr. Gossman has been the owner of "Snowie Naturals" which is a premium shaved ice company with a Dallas location. With this company, Mr. Gossman has worked several large events over the course of 5 years. Some of the large events that Snowie Naturals has been a concessionaire at are, Dallas Fair Park - Jam' Balya, Dallas Fair Park - Earth Day, Addison Circle Park Oktoberfest, Addison Circle Park - Kaboom Town, Addison Circle Park & Dallas Nights.

Education

Memphis culinary school - Dean's list

Local Business Collaboration

Our Big Idea is to bring local business within the Office towers into the park for networking events or company outings/team building activities.

Pavilion rental	\$ 200	starting packages for pavilion to include 3 hours
Event set up	\$ 75	additional equipment for rent such as AV equipment
Catering	\$ TBD	will include inside or outside catering for parties
Activity Rentals	\$1- \$5 per hr	lawn and board games
Chairs & Lounge rentals	\$2-\$4 per hr	chairs for large events

Addison Circle Annual Events -

Our Big Idea is being the vendor at the park entrance providing snacks, refreshments and activities that provide a great introduction to all Town of Addison events hosted at the Addison Circle Park.

Pavilion Patio Enhancement: Making the space modern, inviting and picture worthy is the ultimate goal for the pavilion patio seating area. Enhancement ideas include backdrop wall seating area with planters with exterior plants, heat lamps for the colder months and planters to line the perimeter of the seating area. Plans will also be made to install a string lighting features in the ceiling of the pavilion seating area.







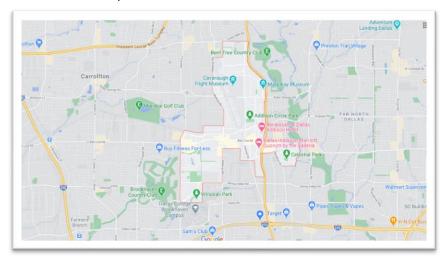
Our menu will feature several different programs such as; coffee and ice tea, over the top shakes, signature ice cream creations, shaved ice, popcorn, mini donuts, beer, and wine.

we are unable to currently post pricing as prices are contastly changing right now.

future menu offerings will increase and change depending on demand and season. we will likely include sandwiches or pre made heat and serve options due to equipment restraints.



Location: Addison, TX



The Town of Addison has over 13.000 residents with an estimated daytime population of over 100,000. Within the Town of Addison city limits, there are more than 170 restaurants, which comes to one restaurant for every 79 Addison residents. Addison is a popular location for many Dallas-area restaurants because Addison allows restaurants to serve alcoholic beverages by the drink, while many nearby municipalities do not. Addison has 22 hotels, featuring a total of at least 4,000 hotel rooms and meeting facilities.

Addison Circle Park – 4950 Addison Circle Dr Addison, TX 75001



The Addison Circle Park is a large outdoor area that will provide the space needed for park visitors to enjoy activities. Located in the heart of North Dallas at the Dallas North Tollway between Beltline and Keller Springs and near several large office towers, businesses, and residential communities.

Annual Addison Circle Events











The Town of Addison hosts and organizes several annual events each year. Each year these events bring thousands of visitos to the park.

The Addison Circle Park Pavilion – Building and Lease Details



800 Sq. Ft Year Built – 2003 Building Class - B

Insert Content





- Cooler x2
- Steam Table x1
- 3 compartment sink





Business Process – Brand & Business Development (Year 1-3)

Phase 1: (Year 1 or 2022)

- Grand Opening Event Picnic in the Park
- implement all menu items & offer picnic baskets Taste Addison Circle
- Create partnerships with all Addison Circle restaurants
- Implement equipment rental program Adult & Family.
- Develop and implement Online marketing campaign.
- POTENTIALLY Addison Circle Park Annual Events Taste Addison, Kaboom Town, Octoberfest, Addison Nights
- Get the word out local news and Addison Magazine.
- Begin developing relationships with other Addison restaurants to set up catering events
- Begin calling local Addison office tenants to discuss corporate/company events
- Set up outings with local Addison businesses such as painting in the park or other family fun experiences

Strategic Business Enhancements – 2022-2024

The highest priority business enhancement is the partnership with local restaurants, event planning companies and local office tenants. Events are what will be the main economic revenue driver for @ThePavilion. Average daily visitor sales will not be high enough to sustain this business model long-term. Start from Day 1 and focus on getting patrons in the park or residents to begin making plans to come into the park. Group On events, local businesses or retailers hosting events in the park and large events with a total patron count of 50+.

Funding & Capital:

Loan Amount	\$60,000
Lender	
Fully Amortized	
Interest Rate	0% Fixed Rate
Loan Terms	5 Year
Payments (Monthly)	\$0.00
Funding Sought	\$60,000

Monthly Expenses Summary:	Total Expenses
Kitchen Equipment	\$60,000
Monthly Lease Rate	15%
Labor	\$6000 per month
Food Costs	22%
Rental maintenance	
Working Capital	
Marketing Campaigns	
	Total - \$000,000

Current Investors: \$50,000 - Dave

Strategy and Implementation Summary

The implementation of the below distribution channels will happen in Phases through year 1 to year 3.

Distribution Channels

- Annual Addison Circle Events Taste Addison, Kaboom Town, Octoberfest, Addison Nights
- Local restaurants or food trucks caterin
- Parties and family events
- Local retailer pop ups
- Office parties & networking events

Other Channels include other large events hosted at the park with the partnership of an event planning company.

Marketing Strategy - Brand Development Strategy

Online Marketing programs:

- SEO Google Ad Words/Other search engines
- Free events
- Online Marketing Campaigns, Pay Per Click, Banners etc.
- Social Media LinkedIn, Facebook, Twitter
- Radio FM, AM & Internet Radio (iHeart Radio, Sirius XM, Pandora)
- Local News PR Releases

Our Target Audience:

- Current Town of Addison Resident
- Past Town of Addison Resident
- Park patron/frequent visitor
- Addison Annual Event customer/visitor
- Local area residents from across the DFW
- Local Hotel customers
- Young Adults
- Active or desire to be more active Families.

Who will be our customers:

- Park Visitors
- Addison Circle Residential community residents
- Surrounding community residents
- Town of Addison Residents
- Dallas, Carrollton, Farmers Branch & Plano city residents
- Adults and families

Council Meeting 7.

Meeting Date: 06/28/2022

Department: General Services

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset

Management Policy, utilizing information systems

AGENDA CAPTION:

Consider Action on a Resolution Approving an Agreement Between the Town of Addison and McClung Roofing for Roofing Restoration at the Police and Municipal Courts Facility and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$383,810.

BACKGROUND:

In November 2019, Addison voters approved Proposition D which included \$7,395,000 for improvements at existing municipal facilities including the restoration or replacement of roofs. Phase two of the facility bond projects includes the restoration of the Police and Municipal Court facility's flat roof and two large metal roof dormers. The roof systems have exceeded their useful life and despite receiving periodic patches and repairs, continue to experience substantial leaks.

The flat roofs at this facility can be restored while the dormers need to be replaced. Restoration is a less expensive and less invasive process than a full replacement. A roof can be restored if the core of the roofing material has remained free of moisture (as determined through core sample testing). The roofing materials proposed for the restoration have a 30 year warranty which is the same length of time as a full roof replacement.

Staff, along with the Town's representative McKinstry, solicited bids from three (3) contractors that are part of cooperative purchasing programs. Cooperative purchasing programs are agencies that bid out products and services for their members to provide the leverage to achieve better pricing on products, equipment and services. McClung was the low bidder with a cost of \$383,810.00. Staff recommends McClung for this project.

Bid Tab

Vendor	Bid	CO-OP	
	Amount		

McClung	\$383,810.00	
		Partners
LBK Roofing	\$384,471.00	OMNIA Partners
Weatherproofing Services	\$409,542.00	OMNIA Partners

\$490,000 was budgeted for this project.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - McClung Contractor Services Agreement McClung Proposal

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACTOR SERVICES AGREEMENT WITH MCCLUNG ROOFING, LLC FOR ROOFING RESTORATION AT THE POLICE AND COURTS FACILITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT IN AN AMOUNT NOT TO EXCEED \$383,810.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize a contractor services agreement with McClung Roofing, LLC for roof restoration services at the Town of Addison Police and Courts facility in an amount not-to-exceed \$383,810.00.

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

SECTION 1. The City Council hereby approves the contractor services agreement between the Town of Addison, Texas and McClung Roofing, LLC for roof restoration services at the Town of Addison Police and Courts facility in an amount not-to-exceed \$383,810.00, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the agreement.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the <u>28th</u> day of <u>JUNE</u> <u>2022</u>.

	TOWN OF ADDISON, TEXAS
	Joe Chow, Mayor
ATTEST:	•
rma Parker, City Secretary	

EXHIBIT A

CONTRACT SERVICES AGREEMENT

Addison Police Department Roof Restoration

This Contract Services Agreement ("<u>Agreement</u>") is made by and between the **Town of Addison, Texas** ("<u>City</u>"), and **Mcclung Roofing, LLC** ("<u>Contractor</u>") (each a "party" and collectively the "parties"), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, City desires to engage Contractor to perform certain work and services, hereinafter referred to only as "services", as further specified in the scope of services defined in Section 1 of this Agreement; and

WHEREAS, Contractor has expressed a willingness to perform said services in conformance with this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Scope of Services

Upon notice to proceed by City, Contractor agrees to provide the necessary services, labor, materials, equipment and supplies related to the Addison Police Department roof restoration project, such services in conformance with the Contract Documents (defined below), including the scope of services attached hereto and incorporated herein as **Exhibit "A"**. Contractor shall not be entitled to any claim for extra services, additional services or changes in the services, except as expressly authorized in writing in advance by City.

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until Contractor completes the services required herein to the satisfaction of City and has been paid in full by City, unless sooner terminated in conformance with this Agreement.

Section 3. Contract Documents

This Agreement is a part of the "Contract Documents", which include:

- (1) This Agreement, including all exhibits and addenda hereto;
- (2) City's Request for Proposals;
- (3) City's written notice(s) to proceed to the Contractor;
- (4) Properly authorized change orders;
- (5) Contractor's Bid Proposal TX-R180903-314834 ("Proposal" and/or "Response"); attached hereto as Exhibit A; and
- (6) Any other materials distributed by the City that relate to the services.

In the event there exists a conflict between any term, provision and/or interpretation of the Contract Documents, the documents shall take precedent and control in the order listed above in this section. If discrepancies are found that may impact the services, it shall be the Contractor's obligation to seek

Contract Services Agreement with Mcclung Roofing for the Addison Police Department Roof Restoration Project

1

clarification as to which requirements or provisions control before undertaking any work on that component of the services. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the services, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the services.

Section 4. Contractor's Obligations

- (a) <u>Performance of Services</u>. Contractor shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform the services. To the extent reasonably necessary, Contractor may engage the services of any agents, assistants, or other persons that Contractor may deem proper to assist in the performance of the services under this Agreement; provided, that Contractor shall be responsible for all costs related thereto, except as expressly authorized in writing in advance by City.
- (b) <u>Standard of Care</u>. Contractor shall perform the services with the skill and care ordinarily provided by competent Contractors practicing in the same or similar locality and under the same or similar circumstances and Contractor licenses. Contractor shall be responsible for the Contractor quality, technical accuracy, and the coordination of all services under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the services. Contractor shall further make, without expense to City, such revisions to the services as may be required to meet the needs of City and which are within the scope of services.
- (c) <u>Additional Services</u>. Should City require additional services not included under this Agreement, Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement.
- (d) No Waiver of City's Rights. Neither City's review, approval/acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor's negligent performance of any of the services furnished under this Agreement.
- (e) <u>Independent Contractor</u>. It is understood and agreed by and between the parties that Contractor, while performing under this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Contractor's actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.
- (f) Inspection of Records. Contractor grants City and its designees the right to audit, examine or inspect, at City's election, all of Contractor's Records relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Contractor's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain Contractor's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Contractor's Records" shall include any and all information, materials and data of every kind and character

generated as a result of the services under this Agreement. City agrees that it will exercise its right to audit, examine or inspect Contractor's Records only during regular business hours. Contractor agrees to allow City and its designees access to all of Contractor's Records, Contractor's facilities and the current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination.

- Confidential Information. Contractor agrees it will notify City in writing if it considers specific information to be confidential or proprietary trade secrets and will use its best efforts to clearly mark all such information as "Confidential" and/or "Proprietary - Trade Secret" at the time it is delivered or made accessible to City. City acknowledges that all such designated information is considered by Contractor to be confidential and the exclusive property of Contractor. Notwithstanding the foregoing, Contractor acknowledges that this Agreement, and all services performed hereunder, are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information if Contractor has not notified City of such designation in conformance with this section. Contractor agrees and covenants to protect any and all proprietary rights of City in any materials provided to Contractor. Additionally, any materials provided to Contractor by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City. In the event City delivers to Contractor information that it has expressly marked "Confidential" or has notified Contractor is confidential or is the proprietary information of a third-party, Contractor agrees it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such information, nor shall it use any such information for any purpose other than in connection with Contractor's performance of the services under this Agreement. Contractor shall further, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or services provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- (h) <u>Certification of No Conflicts</u>. Contractor hereby warrants to the City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to the City in writing.

Section 5. Performance Schedule

- (a) <u>Time for Performance</u>. Contractor shall perform all services as provided for under this Agreement in a proper, efficient, timely, and Contractor manner in accordance with City's requirements. In the event Contractor's performance of this Agreement is delayed or interfered with by acts of the City or others, Contractor may request an extension of time in conformance with this Section 5 for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.
- (b) Extensions: Written Request Required. No allowance of any extension of time, for any cause whatever (including an event of Force Majeure as defined herein below), shall be claimed or made to Contractor, unless Contractor shall have made written request upon City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Contractor have agreed in writing upon the allowance of additional time to be made.
- (c) <u>Costs of Delay</u>. Contractor understands and agrees that time is of the essence of this contract, and that for each day of delay beyond the number of calendar days agreed upon for the completion

Contract Services Agreement with Mcclung Roofing	_
for the Addison Police Department Roof Restoration Project	

of the work herein specified and contracted for (after due allowance for such extension of time as may otherwise be provided for extension of time herein), the City may withhold permanently from the Contract Price an amount equal to \$1,000.00 per day, which the parties agree represents a reasonable estimation of the actual costs that would be incurred by the City in the event of such delay. In the event Contractor's performance under this Agreement is delayed or interfered with, regardless of reason, Contractor shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

Section 6. Payment.

- (a) Compensation; Payment Terms. City agrees to pay Contractor for all services authorized in writing and properly performed by Contractor in general conformance with the fee schedule(s) established in the Contract Documents, subject to changes in the scope of services or additional services agreed upon in writing. Contactor acknowledges that the City's total budget for the services has been established in an amount not to exceed \$383,810.00. Contractor further acknowledges that City may select one or more additional contractors to provide the services under this Agreement and that Contractor shall not be entitled to a minimum amount of compensation during the term hereof. Unless otherwise agreed by the parties, all payments to Contractor by City shall be based on detailed monthly invoices submitted by Contractor for work performed and accepted by City, less any previous payments. Payment will be due within 30 days of the City's receipt and acceptance of an approved invoice. Notwithstanding the foregoing, City reserves the right to delay, without penalty, any payment to Contractor when, in the opinion of City, Contractor has not made satisfactory progress on any component of the services described in the scope of services.
- (b) <u>Deductions</u>. City may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to City. In the event of any breach by Contractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or City's premises, arising out of Contractor's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to Contractor an amount sufficient to completely protect City from any and all reasonably anticipated loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Contractor.
- (c) Appropriation of Funding. All payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any amount due under this Agreement unless the City appropriates funds to make such payment during the budget year in which said amount is payable; provided that during the term of this Agreement the City will take such steps as necessary to appropriate funding for the Project each fiscal year in an amount sufficient to satisfy the reasonably anticipated payment(s) that will become due to Contractor during the ensuing fiscal year. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Contractor. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Section 7. Ownership of Project; Bill of Sale; No Liens

(a) <u>Title of Ownership</u>. Contractor warrants that title to all services, including all equipment and materials incorporated into the Project, will pass to City no later than the time of final payment. Contractor further warrants that upon payment by City, all services for which payments have been received

from City shall be free and clear of liens, claims, security interests or other encumbrances in favor of Contractor or any other person or entity whatsoever.

(b) Assignment; Bill of Sale. Contractor agrees, no later than the time of completion of the Project, to assign to City all manufacturer's warranties relating to equipment, materials and labor used in the Project and further agrees it will at all times perform the services in a manner that will, to the greatest extent possible, preserve all manufacturer's warranties. If necessary as a matter of law, Contractor may retain the right to enforce directly any such manufacturers' warranties during the one year period following the date of acceptance of the Project by City; provided, that City's rights related to the same shall not be subordinate to Contractor's enforcement rights.

CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS RELATED TO ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS DESCRIBED HEREIN HAVE BEEN PAID, DISCHARGED OR WAIVED UPON CITY'S WRITTEN REQUEST.

Section 8. Default; Termination; Abandonment

- (a) <u>Default by Contractor</u>. Should Contractor fail to comply with any term or condition this Agreement applicable to Contractor, or become disabled and unable to comply with any provisions of this Agreement related to the quality or character of the services or time of performance, Contractor shall be deemed in default of this Agreement. If such default is not corrected within ten (10) days after written notice by City to Contractor, City may, at its sole discretion and without prejudice to any other right or remedy:
 - (1) terminate this Agreement and be relieved of any further payment or consideration to Contractor except for all services determined by City to be satisfactorily completed prior to such termination. Payment for work satisfactorily completed shall be for actual costs incurred and non-refundable, including reasonable salaries and travel expenses of Contractor to and from meetings called by City at which Contractor is required to attend, but shall not include any loss of profit of Contractor. City may further proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by resubletting to others; or
 - (2) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Contractor's sole expense.
- (b) <u>Suspension or Termination by City.</u> City may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Contractor. In the event suspension or termination is without cause, payment to Contractor, in accordance with the terms of this Agreement, will be made based on services reasonably determined by City to be satisfactorily performed as of the date of suspension or termination. Such payment will become payable upon delivery of all instruments of service to City and City's acceptance of the same. If City requires a modification of the services under this Agreement, and in the event City and Contractor fail to agree upon such modification(s), City shall have the option of terminating this Agreement and Contractor's services hereunder at no additional cost other

than the payment to Contractor in accordance with the terms of this Agreement for the services reasonably determined by City to be properly performed prior to such termination date.

- (c) Abandonment. If Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the City, or if Contractor fails to timely comply with the orders of the City, when such orders are consistent with the Contract Documents, then, and in that case, where a performance bond(s) exists, the surety on the bond(s) may be notified in writing by City and directed to complete the work (at City's sole discretion), and a copy of said notice shall be delivered to Contractor. After receiving said notice of abandonment, Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the City or the surety on the performance bond, or another Contractor in completion of the work; and Contractor shall not receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the work in either of the following elective manners:
 - (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Contractor, which shall be deducted and paid by City out of such amounts as may be due, or that may thereafter at any time become due to the Contractor under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety (ies) shall pay the amount of such excess to the City; or
 - (2) the City may (under sealed bids when and in the manner required by law) let the contract to another Contractor for the completion of the work under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what would have been the cost under this Agreement, such increase shall be charged to the Contractor and its surety (ies) shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith.
- (d) <u>Remedies Cumulative</u>. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided herein above.

Section 9. Insurance

Contractor shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by City and in compliance with the Contract Documents. Contractor's obligation to provide acceptable certificates of insurance is a material condition of this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and accepted by City. The minimum coverages and limits of liability for the policies of insurance required under this Agreement are maintained by and accessible through the City's purchasing department.

Section 10. <u>Indemnification</u>

- (a) Release of liability. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER.
- (b) Contractor's Indemnity Obligation. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE, IN WHOLE OR IN PART, FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OF CITY, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AND/OR ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).
- (c) <u>Notice of Claim(s)</u>. Contractor shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Contractor's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Contractor's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Contractor of any of its obligations hereunder.

CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 10 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Section 7. <u>Termination</u>; Suspension

- (a) <u>Termination Upon Default</u>. Either party may terminate this Agreement upon written notice if the other party is in default of this Agreement, subject to the defaulting party's right to cure in conformance with the terms of this Agreement.
- (b) <u>Termination by City</u>. City shall be entitled to terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Contractor.

Contract	Services Agreement with Mcclung Roofing
	ddison Police Department Roof Restoration Project

- (c) <u>Termination Following Request for Modification</u>. Should City require a modification of this Agreement with Contractor, and in the event City and Contractor fail to agree upon a modification to this Agreement, City shall have the option of terminating this Agreement and Contractor's services hereunder at no additional cost other than the payment to Contractor, in accordance with the terms of this Agreement, for the services reasonably determined by City to be properly performed by Contractor prior to such termination date.
- (d) <u>Suspension</u>. City reserves the right to suspend this Agreement for the convenience of City by issuing a written notice of suspension which shall describe City's reason(s) for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Contractor's receipt of said notice. Should such suspension extend past the expected duration identified by City in its latest notice of suspension, Contractor shall have the right to terminate this Agreement if Contractor if (i) Contractor provides not less than thirty (30) days prior written notice to City requesting to recommence the services, and (ii) City does not recommence the services within the time requested.

Section 8. Insurance

Contractor shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by City. Contractor's obligation to provide acceptable certificates of insurance is a material condition of this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and accepted by City. The minimum coverages and limits of liability for the policies of insurance required under this Agreement are maintained by and accessible through the City's purchasing department.

Section 9. <u>Indemnification; Notice</u>.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY THE CITY INDEMNITEE TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. Contractor shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Contractor's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Contractor's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Contractor of any of its obligations hereunder. Contractor's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by Contractor under this Agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

Section 10. Notice.

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

Section 11. Verifications by Contractor

Contractor's execution of this Agreement shall serve as its formal acknowledgement and written verification that:

- (a) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter;
- (b) pursuant to Texas Government Code Chapter 2270, that Contractor's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and
- (c) pursuant to Texas Government Code Chapter 2251, that Contractor's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 12. Miscellaneous

(a) Contractor shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of City. (b) Contractor shall comply with all federal, state, county and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly

provided otherwise herein, this Agreement may only be modified, amended, supplemented or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this 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 provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination. (i) This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

Contract Services Agreement with Mcclung Roofing for the Addison Police Department Roof Restoration Project

10

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the $Effective\ Date.$

For City:	For Contractor:
TOWN OF ADDISON, TEXAS	MCCLUNG ROOFING, LLC
By:	By:
Wesley S. Pierson, City Manager	Robert A. Allen, Managing Member
Date:	Date: 6-23-2020
Notice Address:	Notice Address:
Town of Addison Attn: City Manager	Mcclung Roofing Attn: Robert A. Allen
P.O. Box 9010	103 E. Trammell Avenue
Town of Addison, Texas 75001	Everman, Texas 76140
E: wpierson@addisontx.gov	E: RAHENO mcelungRoofing, con



April 11, 2022

ROOFING & SHEET METAL

- Modified Bitumen
- BUR
- EPDM
- TPO/PVC
- Metal
- Shingles
- Tile

ROOF MAINTENANCE & LEAK REPAIR

- Building Surveys
- Leak Repair
- Roof Maintenance

To: Town of Addison

ATTN: Rob Bourestom

RE: Retro fitting a new roof system on the City of Addison Police Department flat

roof areas.

OMNIA Partners CPN # TX-R180903-314834

Dear Mr. Bourestom,

We are pleased to provide you with our bid response for the above referenced project. Please see the below listed which details our proposed "Scope of Work" as well as pricing, and let me know what you think as it pertains to both pricing and the "Scope of Work". Once you have reviewed this bid proposal, if it meets your expectations, please let us know. If this bid does not meet your expectations in any way, please do not hesitate to let us know this as well. We will be happy to make any adjustments necessary to accommodate your needs, within reason.

We would request you let us know as soon as possible if you have any questions or issues with the listed items in our scope of work. If your decision is to use our company, please advise us ASAP so that we can secure any needed materials with long lead times, even though they may not be used for some time. This will allow us to secure and hold pricing for this project if needed for an extended period of time. The proposed pricing is valid for a period of thirty (30) days from the date listed above.

"Scope of Work"

Retro-fit roof area scope includes:

- 1. We will provide for the removal of all access and loose ballast surfacing that now exist in an effort to get the existing roof system as clean as reasonably possible as to accept the new materials to be installed after all preparation work has been accomplished.
- 2. We will also provide for the removal of the now existing decking system at two (2) areas needing to be accessed. Once removed, we will not be reinstalling a new deck system. If in fact a new deck system is desired, we are able to produce such an event at an additional cost to the owner.

- Once all prep work has been completed, we will then install a cold applied Alphaguard roofing system as manufactured by Tremco Roofing Products which is appropriate for such a project.
- 4. Once the roof system has been installed and has been allowed to properly dry, we will then install a new three (3) coarse type liquid applied roof system over the entire affected area. This system will include installing a solid layer of reinforcement set in the base ply of the initial base-coat product applied.
- 5. We will provide for and is strictly limited to all new metal counter-flashing where needed and appropriate that being, under all coping and wall counter-flashing that now exist. All metal seen from the ground will be manufactured from 24 ga pre-finished material and all metal NOT seen from the ground will be manufactured from 24 ga galvanized material.
- 6. We will provide for a workmanship warranty for a period of five (5) years from the point of substantial completed (That being determined by the manufacture) and a Tremco Thirty (30) Year Roof Warranty for any defects of material and/or workmanship.

Sales price for the above mentioned ----= \$323,964.00

"The above mentioned price includes cost for P&P Bonds"

Alternate #1 pricing:

We propose to remove all existing roof material from the new two (2) dormer areas only. Once removed, we will then install a new metal flat-lock seem barrel roof system designed specifically for such an application. This will include removing and installing new shingles in and around the affected area only as well.

Sales price for the above mentioned----= \$59,846.00

- **EXCLUDES:** 1. Any electrical
 - 2. Any plumbing.
 - 3. Any mechanical.
 - 4. Any lightening protection work (Bonded Lightening to handle)
 - 5. Any bird screening removal or modification
 - 6. Any wood work other then what is mentioned above.
 - 7. Any structural work
 - Any engineering.
 - 9. Any heavy gauge work.
 - 10. Any night time work

Please let us know of your decision on this very important project as soon as possible. As you know, the logistics of such a project is extremely difficult and we will need as much notice as possible to accommodate your needs on this project.

Sincerely, Robert A. Allen

April 11, 2022

To: Town of Addison

ATTN: Rob Bourestom

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flat roof areas.

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 - 2. Any plumbing.
 - 2. Any mechanical.
 - 3. Any lightening protection work (Bonded Lightening to handle)
 - 4. Any bird screening removal or modification
 - 5. Any wood work other then what is mentioned above.
 - 6. Any structural work
 - 7. Any engineering.
 - 8. Any heavy gauge work.
 - 9. Any night time work

Please let us know of your decision on this very important project as soon as possible. As you know, the logistics of such a project is extremely difficult and we will need as much notice as possible to accommodate your needs on this project.

Sincerely, Robert A. Allen Council Meeting 8.

Meeting Date: 06/28/2022

Department: General Services

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset

Management Policy, utilizing information systems

AGENDA CAPTION:

Consider Action on a Resolution Approving Change Order #1 to the Contract Between the Town of Addison and TDIndustries, Inc. for Additional Electrical Work at the Police and Municipal Courts Upgrade Project and Increasing the Contract Amount by \$123,114; and, Authorizing the City Manager to Execute the Change Order in an Amount Not to Exceed \$779,774.51.

BACKGROUND:

On November 5, 2019, voters approved Proposition D which included \$7,395,000 for facility improvements at existing municipal facilities including the replacement of Heating, Ventilation and Air Conditioning (HVAC) systems. Phase One included the replacement and upgrade of the Police gun range HVAC which will filter the air within this facility to provide a safe environment for users of the range. Staff, along with the Town's representative McKinstry, solicited bids through a Request for Proposal (RFP) process. TDIndustires was the low bidder with a final cost of \$656,660.51 (including payment bond, performance bond, and maintenance bond).

Despite efforts to determine the anticipated electrical load during the design phase, it was later determined that the facility needed a larger transformer to accommodate the increased demand with the new HVAC units. The Town's consultant will be on-site at the meeting to answer any detailed questions. When Oncor conducted a site visit they indicated that the current transformer location did not meet their current standards because it lacked the minimum 10' clearance to allow Oncor staff to safely work on the transformer. To meet Oncor's requirements, the new transformer will be relocated across the parking lot (see attached diagram).

This change order is for TDIndustries to run all necessary wiring, conduit, provide a new pad, provide a pathway for the utility conductors from the pole drop, and connections from the new transformer location, across the parking lot and reconnect power to the facility. In addition, they will decommission the old transformer. Oncor will provide the new transformer and pole to provide the

power. The \$123,114 for this change is not included in the bond funds but will be included in an end of the year budget amendment from the Self Funded Special Projects Fund.

One Town tree will be trimmed to allow crane access to set the transformer. A shrub on an adjoining property that is located in Oncor's easement will be removed.

The careful observer will note that signatures normally provided in the proposed document are yet to be filled in. A last minute update necessitated making a new document which did not afford us the time to obtain the signatures prior to posting. These will be obtained prior to the Town executing the document.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Change Order #1
Transformer Relocation Placement

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING CHANGE ORDER NO. 1 TO THE CONTRACT BETWEEN THE TOWN OF ADDISON AND TDINDUSTRIES, INC. FOR ADDITIONAL ELECTRICAL WORK NECESSARY FOR THE POLICE AND MUNICIPAL FACILITY UPGRADE PROJECT IN THE AMOUNT OF \$123,114 AND INCREASING THE TOTAL CONTRACT PRICE TO AN AMOUNT NOT TO EXCEED \$779,774.51; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison and TDIndustries, Inc. entered into a contract for certain improvements to the Addison Police and Courts facility on November 9, 2021 (the "Contract") providing for a total annual not-to-exceed amount of \$656,660.51; and

WHEREAS, Change Order No. 1 to the Contract is necessary to provide for the relocation and installation of a new Oncor power transformer to provide for the delivery of power to the improved facility (the "Additional Work"); and

WHEREAS, the City Council now desires to authorize Change Order No. 1 to the Contract authorizing the Additional Work and increasing the Contract amount by \$123,114.00.

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

SECTION 1. The City Council hereby approves Change Order No. 1 to the Contract providing for the Additional Work and increasing the total Contract amount by \$123,114.00, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute Change Order No. 1.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of JUNE 2022.

	TOWN OF ADDISON, TEXAS		
ATTEST:	Joe Chow, Mayor		
Irma Parker, City Secretary			

EXHIBIT A



TOWN OF ADDISON CHANGE ORDER FORM

Change Order Number 1
Project Name: HVAC and Gun Range Facility Upgrade Project
Purchase Order/Project Number(s): 22200166
Project Manager: TDIndustries
Date: June 28, 2022

A. <u>INTENT OF CHANGE ORDER</u>

This change order is necessary to meet requirements to adequately power the facility after the improvements have been made and to meet Oncor requirements regarding the location of a new transformer allow for servicing of the transformer.

B. REASON FOR CHANGE

After bidding the project, the Town was notified that a new transformer would be required to power the project adequately. Additionally, Oncor informed the Town that the new transformer would need to be installed at a different location on site to comply with their accessibility requirements.

C. <u>EFFECT OF CHANGE ON CONTRACT PRICE</u> This change order will have the following effect on the cost of this project:

Item Number/Description	Quantity	Amount
Additions		
New Outside Electrical Work	1	215,534.00
Deletions		
Original Outside Electrical Work	1	92,420.00
Total		123,114.00
Origin	al Contract Amount	656,660.51
Total Contract Amount (Including Previo	us Change Orders)	0
Amount of this Change Order		123,114.00
Revised Contract Amount		779,774.51
Total % Increase/Decrease (Including Previous Change Orders)		17.13%

D. <u>EFFECT OF CHANGE ON CONTRACT TIME</u>

The work required under this change will add the following time to the contract:

Original Contract Time (in days)	210
Total Contract Time Including Previous Change Orders (in	210
days)	600650

115	Increase/Decrease in Time from this Change Order (in days)	
325	Revised Contract Time (in days)	

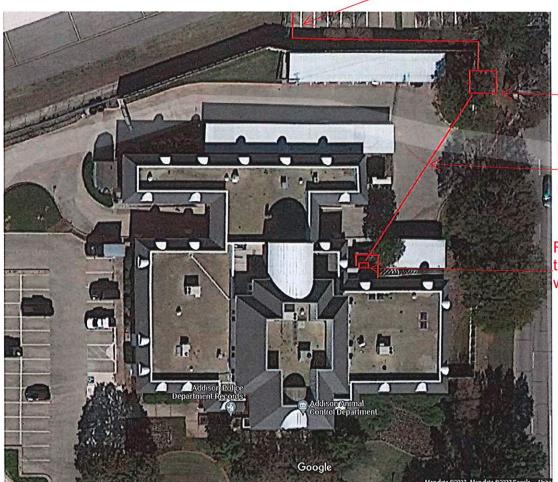
E. AGREEMENT

By the signatures below, duly authorized agent of the Town of Addison, Texas and TDIndustries do hereby agree to append this Change Order Number 1 to the original contract between themselves, dated November 9, 2021.

TDI Indu	stries		
Address			
City	State	Zip	TDI Industries Contractor's Signature
Phone		Fax	\$ - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.000 - 3.
Rob Bou Director (restom of General Se	rvices	Kevin Callis Project Manager
Steven G CFO	Slickman		N/A Design Engineer's Signature
Wesley F			

Transformer Placement

New pathway for primary placed by TDI. Conductor by Oncor



New Transformer placement

New secondary -conduit and conductors by TDI.

Remove old transformer. Place wire pull box here.

Council Meeting 9.

Meeting Date: 06/28/2022 **Department:** City Manager

AGENDA CAPTION:

Consider Action on a Resolution Adopting the Fiscal Year 2023 Strategic Pillars and Milestones.

BACKGROUND:

Since 2016, Addison's City Council has met annually to discuss strategic questions and identify key priorities for the Town. On June 7, 2022 during a Special Council Meeting, a consultant from Strategic Government Resources (SGR) facilitated an interactive discussion among the Council members to identify Strategic Pillars and Milestones for Fiscal Year 2023 (FY23).

This agenda item seeks action on a resolution adopting the FY23 Strategic Pillars and Milestones developed by Council on June 7, 2022 in order to provide clear direction to Staff as they developed their budgets and activities for the next fiscal year. Copies of the proposed resolution and SGR Report developed following the June 7 meeting have been attached for review.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Adoption of Fiscal Year 2023 Strategic Pillars and Milestones Report - Council Retreat on Fiscal Year 2023 Strategic Pillars and Milestones

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING SEVEN STRATEGIC PILLARS AND TEN MILESTONES OF THE ADDISON STRATEGIC PLAN AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council met in a special work session on June 7, 2022 to review and revise the components of the Town's Strategic Plan; and

WHEREAS, the seven Strategic Pillars and ten Milestones have been identified to develop a cohesive vision of the future that creates excitement and commitment for the Town of Addison; and

WHEREAS, as a result of the Council's discussion, the City Council desires to adopt amendments to the Strategic Pillars and Milestones components of the Strategic Plan.

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

Section 1. The special meeting results, including the seven Strategic Pillars and the ten Milestones, attached hereto as **EXHIBIT A** and incorporated herein, are hereby approved.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas this the 28th day of **June** 2022.

	Joe Chow, Mayor
ATTEST:	
Irma Parker, City Secretary	

EXHIBIT A

Pillars and Milestones for Fiscal Year 2023

Pillar One: Innovative in Entrepreneurship and Business

- Milestone 1: Attract and retain innovators in target industries.
- Milestone 2: Leverage Addison's unique assets to grow and expand placemaking business programs and events that will set Addison apart to attract talent and businesses.
- Milestone 3: Leverage Airport assets to maximize business growth and expansion.

Pillar Two: Excellence in Asset Management

• Milestone: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems.

Pillar Three: Excellence in Transportation Systems

- Milestone 1: Effectively utilize and promote the Silver Line development with a first mile/last mile solution.
- Milestone 2: Improve all modes of transportation with infrastructure in acceptable condition and well-maintained.

Pillar Four: Gold Standard in Customer Service

• Milestone: Promote and protect Addison Way.

Pillar Five: Gold Standard in Financial Health

• Milestone: Continue development and implementation of Long-Term Financial Plan.

Pillar Six: Gold Standard in Public Safety

• Milestone: Prepare for the impact of new growth and development in Addison.

Pillar Seven: Optimize Addison Brand

• Milestone: Define and promote Addison Identity.

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City Council Retreat Report

Addison, Texas

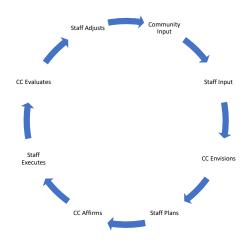
Prepared on June 16, 2022

The City Council of Addison, Texas, held a Council retreat on Wednesday, June 7, 2022. The purpose of the retreat was to review the Council's Strategic Vision and to make updates and changes as needed. The Mayor and all Councilmembers attended the retreat as did the City Manager and key staff from the Management Team. The retreat was facilitated by Jennifer Fadden, Chief Operating Officer for Strategic Government Resources (SGR.)

Structure of the Strategic Vision

The Town of Addison has structured its strategic vision around three primary concepts. (1) Strategic Pillars represent the City Council's long-term priorities. These are the key elements of the strategic vision. (2) Milestones are things that indicate the Town is moving in the right direction at the right speed to fulfill the Strategic Pillar in a timely manner. Each Strategic Pillar has at least one milestone. Milestones help answer the question of "What do you mean by that?" (3) Initiatives are generated and executed by the staff in pursuit of the milestones. It is the responsibility of the City Council to identify the Strategic Pillars and Milestones because they answer the question of, "Where are we going in the future?" However, it is the responsibility of the staff to create the initiatives because that answers the question of, "How will we get there?" Initiatives are part of the strategic plan, and they must be in alignment with the Pillars and Milestones of the Strategic Vision.

Cycle of Strategic Visioning



During the retreat, SGR presented an overview of the Cycle of Strategic Visioning. This allowed the City Council to identify the key steps that had been taken in the previous year toward the fulfillment of the vision and to frame the discussions of the retreat in terms of the process of strategic visioning.

Strategic Pillars

Before and during the retreat, the City Council reviewed the progress that the Town had made toward each Strategic Pillar. During the retreat, the City Council was asked whether any changes should be made to the number or subject matter of each Strategic Pillar, and the City Council indicated that no changes to the Strategic Pillars were necessary and therefore the Pillars remain as:

Pillar One: Innovative in Entrepreneurship and Business

Pillar Two: Excellence in Asset Management

Pillar Three: Excellence in Transportation Systems
Pillar Four: Gold Standard in Customer Service
Pillar Five: Gold Standard in Financial Health

Pillar Six: Gold Standard in Public Safety
Pillar Seven: Optimize Addison Brand

Pillars & Milestones

Some changes were made to some of the Milestones as detailed here:

Pillar One: Innovative in Entrepreneurship and Business

Milestone 1: Attract and retain innovators in target industries.

Milestone 2: Leverage Addison's unique assets to grow and expand placemaking business programs and events that will set Addison apart to attract talent and businesses.

Milestone 3: Leverage Airport assets to maximize business growth and expansion.

Pillar Three: Excellence in Transportation Systems

Milestone: Effectively utilize and promote the Silver Line development with a first mile/last mile solution.

Pillar Six: Gold Standard in Public Safety

Milestone: Prepare for the impact of new growth and development in Addison.

Updated Pillars and Milestones for Fiscal Year 2023

Pillar One: Innovative in Entrepreneurship and Business

Milestone 1: Attract and retain innovators in target industries.

Milestone 2: Leverage Addison's unique assets to grow and expand placemaking business programs and events that will set Addison apart to attract talent and businesses.

Milestone 3: Leverage Airport assets to maximize business growth and expansion.

Pillar Two: Excellence in Asset Management

Milestone: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems.

Pillar Three: Excellence in Transportation Systems

Milestone 1: Effectively utilize and promote the Silver Line development with a first mile/last mile solution.

Milestone 2: Improve all modes of transportation with infrastructure in acceptable condition and well-maintained.

Pillar Four: Gold Standard in Customer Service

Milestone: Promote and protect Addison Way.

Pillar Five: Gold Standard in Financial Health

Milestone: Continue development and implementation of Long-Term Financial Plan.

Pillar Six: Gold Standard in Public Safety

Milestone: Prepare for the impact of new growth and development in Addison.

Pillar Seven: Optimize Addison Brand

Milestone: Define and promote Addison Identity.

Council Meeting 10.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Innovative in Entrepreneurship & Business

Milestones: Leverage the new Customs facility to promote international travel use

of the Airport

Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action on a Resolution Approving an Airport
Ground Lease Agreement Between the Town of Addison and Addison
Hangars, LLC for Commercial Aeronautical Use on Approximately 6.054
Acres of Improved Land Located at the Addison Airport, Authorizing the
Remediation and Demolition of the Existing Building and Structures on the
Foregoing Property, and Authorizing the City Manager to Execute the
Ground Lease and Other Necessary Agreements.

BACKGROUND:

In March 2021, Addison Airport advertised Request for Qualifications (RFQ) #21-75 for the aeronautical redevelopment opportunity of a prime 6-acre site located at 4505 Claire Chennault Drive at Addison Airport. The Airport received four well qualified and attractive written responses. In July 2021, Sky Harbour Group Corporation was selected as the most qualified respondent with a concept and vision best in line with the Airport Master Plan. The City Council was briefed on the Airport's selection process and recommendation on August 28, 2021.

Sky Harbour Group Corporation (NYSE-SKYH) ("Sky Harbour") proposes designing, constructing and operating an exclusive executive jet hangar campus on the 6-acre site subject to a forty-year ground lease agreement between the Town of Addison and Addison Hangars LLC, a Delaware limited liability company ("Addison Hangars"), with Addison Hangars being a wholly owned subsidiary of Sky Harbor.

Consistent with Sky Harbour's scalable business model, the proposed redevelopment will consist of five (5) 14,200 square foot private hangars and one (1) 30,000 square foot semi-private jet hangar. Each of the hangars will have 28-foot-high hangar doors designed to accommodate Aircraft Design Group III aircraft, which include all the larger business jet aircraft capable of operating at Addison Airport. The hangar facilities will be supported with off-street parking and nearly 140,000 square feet of dedicated heavy aircraft apron. Upon completion,

Addison Hangars, will sublease and operate the facility dedicated to serving high-end business aviation users including corporate and private flight departments operating large, late-model business aircraft. Estimated construction value of the building improvements as planned are estimated to exceed \$15 million.

The proposed development site is the former 6-acre Addison JetPort, located at 4505 Claire Chennault at the southeast corner of the Taxiway Alpha and Taxilane Victor intersection. The site was once subject to a ground lease, which expired in 2013 when the Town took ownership of the existing building improvements, including a two-story 11,000 square foot office/terminal building with 80,000 square feet of concrete aircraft apron. The building has been vacant since 2019 and the apron used on a limited basis as aircraft overflow parking for nearby operators. Under the proposed lease, the Addison Hangars is responsible for the demolition of the existing building improvements at their sole cost, expense and risk. Prior to demolition, the Town is responsible for remediation of some asbestos containing material, which Addison Hangars has agreed to perform on the Town's behalf pursuant to a separate reimbursement agreement, not to exceed \$30,000.

Pursuant to the proposed lease terms, the proposed development represents \$189,000 in additional annual real estate revenue and \$75,000 in annual fuel flowage fees to the Airport. Collectively, the additional real estate revenue and fuel flowage fees represent \$12,500,000 in airport revenue over the 40-year lease term. When discounted at 6% per annum the projected cashflow yields a net present value of \$4.470 million. It is estimated the local business property and ad valorem tax base will benefit by as much as \$690,000 per annum once business operations stabilize.

Overview of Estimated Economic Impact					
Ground Rent	\$189,000	\$.72 per SFL ; 6.054 acres (263,712 SFL)			
Fuel Flowage Fees	\$75,000	\$.73/hangar square feet			
Business Property Tax (Aircraft)	\$615,000	\$100 million @ \$.61466/mil (DCAD est. rate)			
Projected Ad valorem Leasehold Tax	\$105,000	\$15 million @ \$.61466/mil			
Total Annual Economic Benefit	\$984,000				
Net Cashflow over Lease Term	\$12,500,000	Ground Rent & Fuel Flowage Fees			

Net Present Value (NPV) of Cashflow (discount @ 6%)	\$4,470,000	
Tenant's Capital	\$10,000,000 to	
Investment (est.)	\$15,000,000	

Sky Harbour intends to finance the design, construction and operation of their new executive hangar campus with loan proceeds originating from the sale of Series 2021 tax-exempt private activity bonds through municipal conduit issuer, Public Finance Authority. These private activity bonds do not require the full faith and credit of the Town, are not Town issued debt, nor a monetary liability or obligation of the Town. The bonds are secured by Sky Harbour's qualifying project's, including Addison Hangars, leasehold interests and building improvements and are repaid from Addison Hanger's operating revenues generated by the properties.

The Addison Hangar, LLC redevelopment and lease arrangement supports the Town's objectives for the Airport by enhancing the overall value of the Airport with new development, increased revenue, and an enhanced tax base. The proposed use is consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

The city attorney has reviewed the Ground Lease and other related documents, finding the same acceptable for the Town's purposes.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - Sky Harbour Resolution - Ground Lease Addison Hangers Subject Location Summary of Lease terms

Proposed Ground Lease

Addison Hangars, LLC



Matter for Council Consideration



A proposed long-term Ground Lease between the Town of Addison and Addison Hangars, LLC

- A 40-year Ground Lease.
- Tenant redevelops the site as Executive/Corporate Jet Hangar Campus.
- Tenant responsible for any demolition at sole cost and expense.
 - City is responsible to remediate existing hazardous materials prior to demolition.
- Minimum Construction Value of New Building Improvements= \$10 million.
- Project is to be financed with proceeds from private activity bonds secured by Sky Harbour Group, parent of Addison Hangars, LLC.

Location





Location





Background



- March 2021 Solicitation RFQ 21-75: 4505 Claire Chennault Dr.
 - Desired Outcome: to identify qualified real estate developers, commercial aeronautical operators and corporate flight departments demonstrating the desire, interest and wherewithal to redevelop prime real estate at Addison Airport.
 - Four qualified respondents.
- July 2021 Sky Harbour Group Corporation Selected
 - Development concept consistent with Airport objectives.
 - Established developer, proven business model and well capitalized.
- August 2021 Council briefed on staff's selection process and staff recommendation

Subject Site Description





Prime Flightline Location Improved with:

- 11,000 SF two-story terminal building vacant since 2019 (pending redevelopment).
- 80,000 SF of 6" aircraft apron (fair condition).
- 100+/- concrete off-street vehicle parking spaces.
- Conventional utilities available to the site.
- 418 feet of frontage to Taxiway Alpha.
- 550 feet of frontage to Taxilane Victor.



About Sky Harbour Corporation (NYSE-SKYH)



- A New York-based aviation development company building "Home-Basing Solutions" for corporate and private executive flight departments.
- Became publicly held company earlier this year via a special purpose acquisition with Yellowstone Acquisition, valuing the company at \$777 million.
- Builds high-end private hangar campuses with a full suite of dedicated services for based aircraft.
- Has projects in Houston/Sugar Land, Nashville, Miami, Denver, Phoenix.
- Sky Harbour's management team consists of seasoned professionals who combine aviation experience with a strong real estate development pedigree.

Equipment storage

SF of private office/lounge/storage space with restrooms (per hangar) ~26,500 SF of hangar space ~3,500 SF of private descriptions space with restrooms Administration/Ground Support

Sky Harbour proposes to build a 101,000 Square Foot Executive Hangar Campus as follows:

- Five 14,200 square-foot hangars
- One 30,000 square-foot semi-private hangar
- 140,000 SF dedicated heavy aircraft apron
- 76 off-street vehicle parking spaces
- Native drought-tolerant airport friendly landscaping
- Airside gates with access control



Site Plan



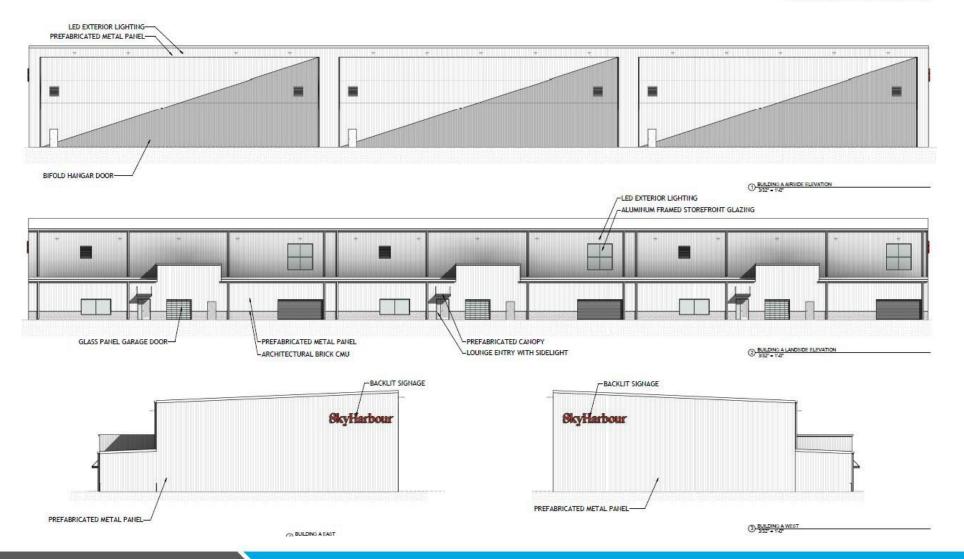


Private Hangar Elevations



BUILDING A ELEVATIONS

NEW HANGAR DEVELOPMENT - ADS

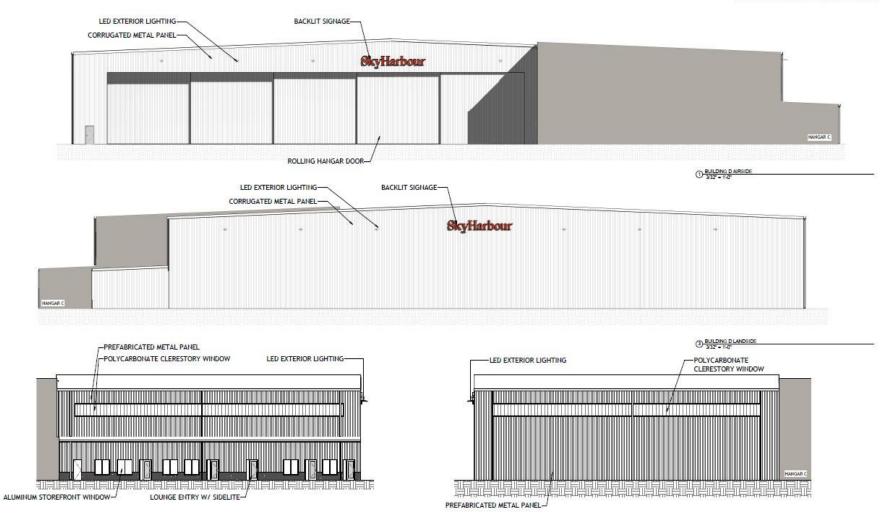


Semi-Private Hangar Elevation



BUILDING D ELEVATIONS

NEW HANGAR DEVELOPMENT - ADS



Summary of Lease Terms



- 1. Effective Date: Date Ground Lease is executed by Town of Addison.
- 2. Lease Term: Term Commences when a Certificate of Occupancy is issued for any portion of the New Building Improvements and continues for 40-years (480 months).
- 3. Rent: Upon commencement the Base Rent will be \$189,872 annually / \$15,822 monthly (\$.72 / square foot of land).
- 4. Adjustment of Rent: Biennial adjustment beginning on the second anniversary of the Commencement Date based upon the percentage of change in the local Consumer Price Index (CPI) published by the U.S. Dept. of Labor.
- 5. Permitted and Restricted Use of Premises: Shall be used for the following purposes:
 - A. Constructing, owning, operating an executive aircraft hangar campus with office, parking, passenger lounge, administrative and shop space which may be sublet to aircraft owners and operators.
 - Minimum hangar door clearance 28 feet high
 - Accommodates Aircraft Design Group (ADG) III aircraft

Summary of Lease Terms (cont.)



5. Permitted and Restricted Use of Premises (cont.)

- B. Standard airport restrictions provisions apply.
 - No non-aeronautical uses
 - No discrimination
 - Services provided are to be fair and equitable
- C. No third-party maintenance, flight schools, retail services

6. Building Improvements and Construction of New Improvements:

- A. Existing Building Improvements <u>Lease Addendum #2</u>
 - Town responsible for disconnecting utilities.
 - Under a Separate Letter Agreement Tenant will remediate Hazardous Materials, Town to reimburse Tenant for actual expense. Estimated cost is \$37,500.
 - Tenant responsible for demolition of all building improvements at its sole costs, expense and risk.

Summary of Lease Terms (cont.)



- 6. Building Improvements and Construction of New Improvements (cont.):
 - B. New Building Improvements Lease Addendum #3
 - Minimum Construction Value \$10M.; As planned estimated to exceed \$15 million
 - Design Plan to be delivered w/in 6 mos. of Effective Date
 - Construction to commence w/in 18 months of Effective Date
 - Substantial Completion is to be w/in 24 months of Construction Start Date
 - Delay Penalty is \$400/day
 - Tenant to provide Performance and Payment Bond at 100% Construction Value, with Town as beneficiary, during period of construction.
 - C. Future Building Improvements must have Landlord's prior written consent, like New Building Improvements.
- 7. Maintenance and Repair of Demised Premises: <u>Lease Addendum #1</u> Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices.
- 8. Title to Building Improvements: Tenant owns the building improvements made to the Leased Premises. At end of Lease Term, building title reverts to the Town.

Proposed Development Financing



Tenant to finance the design, construction and operation of the building improvements using proceeds from Private Activity Bonds.

- A. In August 2021, Sky Harbour Group secured \$166.34 million in financing through the sale of Series 2021 private activity tax-exempt bonds through municipal conduit issuer, Public Finance Authority ("PFA").
- B. Qualifying Sky Harbour projects, including Addison Hangar, leasehold improvements serve as security (collateral) for the bonds, and the revenue from the properties are used to repay the bonds.
 - As part of the financing plan, Sky Harbour contributed \$68 million in equity to the Obligated Group.
- C. These Private Activity Bonds **do not** constitute a:
 - i. Debt, loan of credit, or a pledge of the full faith and credit or taxing power of the Town; or
 - ii. Monetary liability of the Town; or
 - iii. Contingent liability or obligation, charge directly or indirectly against the general credit of the Town.
- D. The bond issuer generally has the same rights and remedies as any other leasehold mortgagee at the Airport (e.g., right to cure tenant lease default, take possession of the leasehold in event of loan default).

Proposed Development Financing (cont.)



Town's Obligation:

As the host jurisdiction, the Town is required to hold a public hearing and approve the issuance of the bonds to finance or refinance the project in satisfaction of Section 147(f) of the Internal Revenue Code and Section 66.0304(11)(a) of the Wisconsin Statutes, where the Public Finance Authority is authorized to issue the bonds.

- Notice of Public Hearing to be advertised.
- Public hearing and council approval of resolution to occur prior to approval of Ground Lease.

Economic Impact



Overview of Economic Impact						
Ground Rent	\$189,000	\$.72 per SFL; 6.054 acres (263,712				
		SFL)				
Fuel Flowage (FFF)	\$75,000	\$.73/hangar square feet				
Business Property Tax (Aircraft)	\$615,000	\$100 million @ \$.61466/mil				
		(DCAD est. rate)				
Ad valorem Leasehold Tax	\$105,000	\$15 million @ \$.61466/mil				
Estimated Annual Economic Impact	\$984,000					
Net Cashflow Over Lease Term	\$12,500,000	Ground Rent & FFF only				
Net Present Value (NPV) of	\$4,470,000					
Cashflow (disc. @ 6%)	Ş4,470,000					
Tenant's Capital Investment (est.)	\$10,000,000 to					
	\$15,000,000					

Conclusion & Recommendation



The Addison Hangars, Development and Lease Proposal Achieves:

Council's Strategic Pillars

Innovation in Entrepreneurship & Business

- Milestone #2: Leveraging the new Customs Facility to promote international travel use of the Airport
- Milestone #3: Leverage the use of the Airport to maximize business growth and expansion.

Town's objectives for the Airport

- Enhances overall value of the Airport with new development
- Increases revenue
- Enhances tax base
- Consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

Recommendation: Administration recommends approval.



QUESTIONS?

RESOLUTION NO.	
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A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE GROUND LEASE BETWEEN THE TOWN OF ADDISON AND ADDISON HANGARS, LLC FOR COMMERCIAL AERONAUTICAL USE ON APPROXIMATELY 6.054 ACRES OF IMPROVED LAND LOCATED AT THE ADDISON AIRPORT; AUTHORIZING THE REMEDIATION AND DEMOLITION OF THE EXISTING BUILDING AND STRUCTURES ON THE FOREGOING PROPERTY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GROUND LEASE AND SUCH OTHER AGREEMENTS AS MAY BE NECESSARY TO EFFECTUATE THE FOREGOING; AND PROVIDING AN EFFECTIVE DATE ACCORDINGLY.

WHEREAS, Addison Hangars, LLC desires to enter into a ground lease to redevelop approximately 6.054 acres of improved land (the "<u>Subject Property</u>") located at the Addison Airport for commercial aviation use (the "<u>Ground Lease</u>"); and

WHEREAS, upon execution of the Ground Lease, Addison Hangars, LLC intends to perform remediation and demolition of the existing buildings and structures on Subject Property in accordance with the terms and conditions of the Ground Lease; and

WHEREAS, the City Council herein desires to authorize the City Manager to execute the Ground Lease and such other documents as may be necessary to complete the remediation and demolition of the existing buildings on the Subject Property in conformance the Ground Lease.

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

SECTION 1. The Ground Lease between the Town of Addison and Addison Hangars, LLC for commercial aeronautical use on the Subject Property, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Ground Lease and such other documents as may be necessary to complete the remediation and demolition of the existing buildings on the Subject Property in conformance therewith.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of JUNE 2022.

TOWN OF ADDISON, TEXAS
Joe Chow, Mayor

ATTEST:	
ATTEST.	
Irma Parker, City Secretary	

EXHIBIT A

STATE OF TEXAS §
COUNTY OF DALLAS §

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("Lease") is made and entered into as of ______, 202_(the "Effective Date"), by and among the Town of Addison, Texas, a Texas home-rule municipality (hereinafter referred to as "Landlord") and Addison Hangars LLC, a Delaware Limited Liability Company (hereinafter referred to as "Tenant") (Landlord and Tenant may be each referred to herein individually as a "party" and together as the "parties").

- Summary of Exhibits
- Exhibit 1: Legal Description of Addison Airport
- Exhibit 2: Survey of Demised Premises
- Exhibit 3: Legal Description of Demised Premises
- Exhibit 4: Description of Building Improvements and Approved Site Plan
- Exhibit 5-A: Form of Memorandum of Ground Lease
 Effective Date
- Exhibit 5-B: Form of Memorandum of Ground Lease
 Commencement Date
- Exhibit 6: Master Landlord Sublease Consent Form
- <u>Lease Addendum #1</u>- Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices
- <u>Lease Addendum #2</u> Demolition of Existing Improvements
- <u>Lease Addendum #3</u> Construction of Building Improvements
- <u>Lease Addendum #4</u> Leasehold Mortgagee Provisions

WITNESSETH:

WHEREAS, Landlord is the record title owner of the Addison Airport in Dallas County, Texas, a description of which is set forth in Exhibit 1 attached hereto and incorporated herein (the "Airport"); and

WHEREAS, Landlord is operator and manager of the Airport, and any person or entity appointed or authorized by Landlord from time to time to manage or operate the Airport on behalf of the Landlord (severally and/or collectively hereinafter referred to as "Airport Manager" or "Manager"); and

WHEREAS, the Town of Addison, as a home-rule municipality, operates under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5, of the Texas Constitution. The Town of Addison, as a municipality, from time to time establishes and enforces federal, state and local ordinances, codes and regulations, which in doing so is acting in its governmental capacity, which may be the same or separate as its capacity as Landlord and Manager provided for herein.

WHEREAS, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, a portion of the Airport generally described and hereinafter referred to as two specific parcels of improved and unimproved airport land collectively consisting of approximately 6.05 acres (263,124 gross square feet) located where commonly known as 4505 Claire Chennault Drive within the Airport as shown in the ALTA/NSPS Land Title Survey prepared by Commercial Due Diligence Services dated as of January 5, 2022 and as illustrated in Exhibit 2 and more particularly described in Exhibit 3 attached hereto and incorporated herein (collectively the "Property Survey"), together with the non-

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exclusive right to use the Common Facilities as defined in <u>Section 17</u> hereinbelow (referred to herein as the "<u>Demised Premises</u>") according to the terms and conditions set forth in this Lease. The Property Survey was prepared by a licensed surveyor in the state of Texas and provides a legal description by metes and bounds and establishes the gross square feet of land area contained within the Demised Premises used as the multiplier to calculate Base Rent identified in <u>Section 3</u> hereinbelow.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

In consideration of and subject to the terms, covenants and conditions set forth in this Lease, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to the Laws (as defined in Section 8 herein) and Tenant's compliance thereof as set forth in Section 8, and the Airport Governing Documents(as defined in Section 18 herein) and/or as elsewhere expressly provided for in this Lease. The parties shall execute a short form Memorandum of Ground Lease substantially in the form of Exhibit 5-A to be recorded in the Dallas County Official Public Records affirming this Lease and its Effective Date.

Section 2. Term:

- A. Subject to the termination and all other provisions of this Lease, the term hereof (the "Term") shall commence on the date that a Certificate of Occupancy is issued by Landlord (temporary or permanent) for any part of the Building Improvements (as defined in Lease Addendum #3 of this Lease, incorporated herein by reference) constructed upon the Demised Premises (the "Commencement Date"), and shall end the last day of the Four Hundred and Eightieth (480th) full calendar month following the Commencement Date (including the month of the Commencement Date) (the "Expiration Date"). For the purposes herein a Certificate of Occupancy is a document issued by the Town of Addison's building department evidencing the Building Improvement's (as defined in Section 6) class of construction, suitability for occupancy and compliance to applicable building codes and ordinances at the time of issuance. The period beginning upon the Effective Date given above and ending upon the Commencement Date is herein referred to as the "Preliminary Period". Any entry upon and/or use of occupancy of the Demised Premises by Tenant during the Preliminary Period shall be subject to all terms and conditions of this Lease.
- B. Contemporaneously with the Commencement Date of this Lease, the parties shall execute a short form Memorandum of Ground Lease to be substantially in the form of Exhibit 5-B herein incorporated and made a part herein by reference to be recorded in the Dallas County Official Public Records evidencing this Lease, which shall include but shall not be limited to, the legal description of the Demised Premises, the full name and notice address for each party, and the Term of this Lease.

Section 3. Rent; Security Deposit

A. Subject to adjustment as hereinbelow provided, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, Rent (as defined herein below) each month over the Term for the Demised Premises as set forth below:

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- 1. <u>Base Rent</u>: Tenant agrees to and shall pay Landlord annual rent for the Demised Premises as follows (hereinafter "Base Rent"):
 - a. If the Commencement Date occurs during the calendar year 2023, the rate shall be the product of \$.7200 times the gross square feet of the Demised Premises as determined by the Property Survey (e. g. \$.720 x 267,894 gross square feet = \$192,883.68).
 - b. If the Commencement Date occurs during the calendar year 2024, the rate shall be the product of \$.7344 times the gross square feet of the Demised Premises as determined by the Property Survey.
 - c. If the Commencement Date occurs during the calendar year 2025, the rate shall be the product of \$.7491 times the gross square feet of the Demised Premises as determined by the Property Survey.
 - d. If the Commencement Date occurs any time after calendar year 2025, the Base Rent shall be the prevailing fair market unimproved ground lease rate for the Airport as determined by a third-party licensed appraiser acceptable to the parties, which cost of said appraisal shall be shared equally and payable by the parties.

Base Rent, as determined above, shall be paid by Tenant in twelve equal monthly payments in advance of or before the first day of each calendar month, with the first monthly payment of Base Rent due and payable on or before the Commencement Date. Thereafter, Base Rent is subject to periodic adjustment over the Term as set forth in Section 4 below. All Rent is due on the first of each month and is delinquent after the tenth (10th)day of each month and subject to the provisions of Section 39.

- 2. In the event the Commencement Date is a date other than the first day of a calendar month, the first monthly payment for the portion of Base Rent shall be prorated on a per diem basis, which shall equal the product of the Base Rent multiplied by a fraction, the numerator of which is the number of days remaining in the partial month (beginning with the Commencement Date and ending with the last day of the partial month) and the denominator of which is the number of days in such full calendar month.
- 3. For purposes of this Lease, the term "Rent" means Base Rent, additional rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for non-payment of Base Rent.

Section 4. Adjustment of Base Rent:

- A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the "<u>Adjustment Date</u>"), the monthly Rent due under <u>Section 3.A.1</u>. (Base Rent) shall be adjusted as follows:
- Base Rent shall be adjusted to reflect changes in the Consumers' Price Index All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication Consumer Price Index for All Urban Consumers (CPI-U) for the Dallas-

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Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing as of the Commencement Date. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

- 2. Beginning with the first full month following the then applicable Adjustment Date, Base Rent shall be adjusted so that it equals the product of the Base Rent multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the "Adjusted Base Rent"), but in no event shall such Base Rent ever be decreased below the Base Rent set forth in Section 3.A.1.
- 3. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

Section 5. Use of Demised Premises:

During the Term the Demised Premises shall be used and occupied by Tenant as set forth hereinbelow:

A. Permitted Uses:

- Constructing, owning, operating an executive aircraft hangar campus with office, parking, passenger lounge, administrative and shop space which may be sublet to aircraft owners and operators; and
- 2. Aircraft hangars are to be no less than eight thousand (8,000) useable square feet, excluding office, passenger terminal, and shop space; and
 - 3. Aircraft hangar doors shall have a height no less than twenty-eight feet (28') high; and
- 4. Aircraft parking apron designed to meet aircraft wingtip clearance standards for Aircraft Design Group III with taxilane connectors to Taxiway Alpha and/or Taxilane Tango meeting Taxiway Design Group 2 (TDG-2) standards, designed to be capable of supporting movements of aircraft up to 115,000 pounds (dual wheel main gear) and 5,000-gallon capacity refueler trucks; and
- 5. Office or administrative spaces that will be used in support of aeronautical operations or services, namely corporate flight operations offices and/or charter and corporate aircraft management services; and incidental support, services, and materials in connection with aircraft stored or based at the Demised Premises, including routine maintenance and repair provided to Tenant's or Tenant's sub-tenant's aircraft or aircraft in Tenant or Tenant's sub-tenant's care, custody and control. Tenant or Tenant's sub-tenant shall also be permitted to obtain a Part 145 Repair Station License as provided under 14 CFR 145 to provide maintenance service to aircraft explicitly under Tenant's or Tenant sub-tenant's care, custody and control; and

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- 6. Any use consistent with the Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers to the extent authorized or otherwise permitted by this Lease; and
 - Any other uses authorized in advance and in writing by Landlord.
- B. Prohibited or Restricted Use of Demised Premises: The following uses are expressly prohibited without Landlord's prior written consent:
 - Third-party aircraft maintenance and repair, including, but not limited to, airframe, power plant and avionics except as provided for in sub-paragraph A.5 above; and
 - Ground transportation for rent or hire; and
 - Retail services including food sales, barber and valet services, alcoholic beverage sales, sales of pilot supplies, newsstands, and gifts; and
 - 4. No portion of the Demised Premises shall be used for anything other than aeronautical operations and services or, in the support thereof (e. g. Tenant may not use or sublet office/shop space to a third party with no need, use or requirement of aeronautical operations or services based on the Demised Premises); and
 - Any portion of the Demised Premises designed and constructed for aircraft storage may not be used for any purpose not conforming with the FAA Policy <u>Non-Aeronautical</u> <u>Use of Airport Hangars (81 FR 38906)</u> as may be amended or, modified from time to time; and
 - 6. Any illegal purpose or any other activity (under any federal, state, county and/or municipal law, rule, regulation, standard, or policy) that, in Landlord's reasonable opinion, would create a nuisance, unreasonably disturb other tenants of the Airport, or which may cause an increase in Landlord's insurance costs, whether such increased costs are actually incurred; and
 - Aviation fueling operations of any kind without a valid fuel dispensing permit issued by the Town of Addison.

The Tenant shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises are leased (in conformance with <u>Section 5.A.</u>, above), except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or reasonable periods for construction, repairs and alterations of the Building Improvements (as defined herein in <u>Lease Addendum #3</u>) to the Demised Premises, all such repairs and alterations to be diligently pursued to completion.

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

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

D. To the extent the Demised Premises is used for commercial purposes, Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Section 6. Building Improvements and Construction of New Building Improvements:

In connection with the use and occupancy of the Demised Premises by Tenant, Tenant will cause to be constructed on the Demised Premises throughout the Term, buildings and other improvements at Tenant's sole cost, expense and risk (except as may be otherwise agreed to in writing by Landlord and Tenant), which are to be approved in advanced by Landlord. For purposes herein, the term "Building Improvements" shall mean, without limitation, the "Existing Building Improvements" defined in Lease Addendum #2, "New Building Improvements" as defined in Lease Addendum #3, and any other future building or improvements made to, constructed, installed, located or placed upon the Demised Premises during the Term, as the Term may be extended or modified. Except as provided for by this Lease (including Lease Addendum #2 and Lease Addendum #3), Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

- A. Existing Improvements; Demolition and Site Preparation: See <u>Lease Addendum</u> #2 attached hereto and incorporated herein by reference.
- B. Construction of New Building Improvements: See <u>Lease Addendum #3</u> attached hereto and incorporated herein by reference.

Section 7. Acceptance of Demised Premises:

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE,

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COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN (OR WILL BE) ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR CODES, REGULATIONS LOCAL STATUTES, OR ORDINANCES. TENANT THAT ACKNOWLEDGES THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

Notwithstanding anything in this <u>Section 7</u> to the contrary, the Parties agree and acknowledge that the Tenant has identified portions of the Demised Premises which require asbestos and lead paint remediation. Tenant is accepting the Demised Premises subject to that condition and an agreement detailed in <u>Lease Addendum #2</u> for the condition to be remedied at the Landlord's sole cost and expenses.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in <u>Section 32</u>, below.

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Section 8. Laws; Compliance with Laws:

- A. This Lease is subject to and Tenant shall comply with all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration ("FAA"), Texas Department of Transportation ("TxDOT"), the United States Environmental Protection Agency ("EPA"), and the Texas Commission on Environmental Quality ("TCEQ")) whether applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances for which Landlord, at its sole absolute discretion accepts and becomes obliged (collectively "Laws").
- B. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises.
- C. Tenant acknowledges that Landlord is bound by the terms and conditions of all FAA, TxDOT, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to knowingly take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.

Section 9. Assignment, Subletting and Mortgaging of Demised Premises; Stored Aircraft Information:

A. Assignment:

1. Without the prior written consent of Landlord (which consent will not be unreasonably delayed, conditioned or withheld), Tenant shall have no power to and shall not either voluntary or involuntary, by operation of law or otherwise, assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise, (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a "Tenant Affiliate", or "Leasehold Mortgagee", as each are herein defined below in accordance with and subject to all of the terms and conditions of this Lease) nor sublet (except as provided for in Section 9(B) below) in whole or in part any portion of the Demised Premises, and 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 Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease.

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No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or sublessee all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any guarantor of any liability to Landlord under this Lease or otherwise.

- 2. If consent by Landlord to an assignment is required hereunder, Tenant shall deliver a written request to Landlord for Landlord's consent to the proposed assignment, which shall include, in addition to any other information or materials that Landlord may request: (i) the full legal name of the proposed assignee, including the name and title the person directly or indirectly holding a controlling ownership interest in the proposed assignee (if an entity); (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) financial statements prepared or reviewed by an independent CPA, or other evidence of the proposed assignee to perform its obligations under this Lease.
- 3. For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date cease to own or have voting control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification confirming that no such assignment has occurred without Landlord's consent, if such consent is required hereunder. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities.
- 4. Tenant shall have the right to assign this Lease, or sublet the Demised Premises or any portion thereof, without the consent of Landlord, to any entity (a) with which Tenant may merge or consolidate, or (b) which is a parent or subsidiary of Tenant (collectively "Tenant Affiliate"). Tenant, or its successor in interest shall give Landlord written notice of any such assignment of this Lease to a Tenant Affiliate within thirty (30) days of said assignment, which said notice shall affirm the Tenant Affiliate information required by Section 48 below.
- 5. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:
 - a. the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of the Airport as determined by Landlord; or

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- the proposed assignee has not demonstrated sufficient financial responsibility, or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under the Lease at the time when the consent is requested; or
- the proposed assignee's intended use of the Demised Premises as defined in the Lease is inconsistent with the Lease; or
- d. the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Airport is subject (including, without limitation, any grant agreements or grant assurances of the FAA or any other governmental entity or agency); or
- e. if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or
- f. the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Lease.
- 6. For purposes herein and any applicable law, and without limitation as to other grounds for Landlord delaying consent, it shall be deemed to be reasonable for Landlord to delay its consent for a period of forty-five (45) days pursuant to Section 51 after the receipt by Landlord of all information requested by Landlord regarding or in connection with the proposed assignment and the proposed assignee.

B. Subletting:

- 1. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting hangars for aircraft storage (including ancillary office space and maintenance space), provided that each sublease is evidenced by written agreement, signed and duly executed by Tenant and each and every sublessee, which is made subject to the "Master Landlord Sublease Consent", substantially in the form attached hereto and incorporated herein by reference as Exhibit 6 to this Lease and which fairly states:
 - Each sublessee agrees to be bound by the terms and provisions of this Lease; and/or
 - b. Any such sublease is to automatically terminate upon termination of this Lease notwithstanding any other provision of the sublease to the contrary, Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under any sublease.
- Neither this consent, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

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- 3. Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any uncured violation of any term and condition of this Lease by a sublessee shall constitute a default by Tenant under this Lease.
- 4. Upon request by Landlord, Tenant shall provide to Landlord a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes a default of this Lease, subject to notice and cure as provided in Section 23.
- Landlord, or its designated representative shall consider and give consent to each Master Landlord Sublease Consent request, which shall not be unreasonably delayed, conditioned or withheld.

C. Mortgaging of Leasehold Estate:

- 1. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan or private activity bond for the purpose of (i) obtaining funds for the construction of the Building Improvements described in Section 6, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing which should not be unreasonably delayed, conditioned, or withheld. If Tenant borrows money for any purpose provided for above, and the lender requires a mortgage, deed of trust or some other form of security interest (a "Mortgage") to secure the loan, then Tenant may, without Landlord's further consent, enter into a Mortgage with a bank, lender (or, if the bank's or lender's interest have been assigned by or on behalf of a mortgage beneficiary) herein referred to as a "Leasehold Mortgagee"). The Leasehold Mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said Leasehold Mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said Leasehold Mortgagee shall remain liable for such obligations only so long as such Leasehold Mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such Mortgage shall ever relieve Tenant of Tenant's obligation to pay the Rent due hereunder and otherwise fully perform the terms and conditions of this Lease.
- 2. A Mortgage is not an assignment of this Lease or of Tenant's interest in this Lease, and a Mortgage does not and shall not be construed to make Landlord a principal or surety on the loan or any other financial obligation secured by the deed of trust or similar security. Any Mortgage

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affecting Tenant's leasehold estate shall contain provisions (i) requiring the Leasehold Mortgagee to give Landlord at least fifteen (15) business days written notice prior to accelerating the debt of Tenant to such Leasehold Mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) business day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said Mortgage.

- 3. Landlord agrees, if and so long as the Tenant's leasehold estate is encumbered by a Mortgage and written notice to such effect has been given to Landlord to give the Leasehold Mortgagee at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the Leasehold Mortgagee, or as otherwise may be specified by the Leasehold Mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such Mortgage shall have the right, for a period of thirty (30) days after its receipt of such notice to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such Leasehold Mortgagee the notice provided for herein and affording any such Leasehold Mortgagee the right to cure such default as provided for herein. If the default cannot objectively be cured within the cure period, and if the Leasehold Mortgagee proceeds diligently and in good faith to cure the default, then the Leasehold Mortgagee will be entitled a reasonable additional period of time to cure the default but, not to exceed six (6) months from the date of the Leasehold Mortgagee's notice.
- 4. No provision of this <u>Section 9.C</u> may be construed to impose upon the Leasehold Mortgagee the duty to perform any Tenant obligation under this Lease or to remedy any Lease default by Tenant. Landlord shall accept the Leasehold Mortgagee's performance of any Tenant covenant, condition or agreement under this Lease with the same force and effect as through performed by Tenant, and when accepted, the Lease will remain in full force an effect between Landlord and the Leasehold Mortgagee.
- 5. If a Tenant default under this Lease cannot be cured, the Leasehold Mortgagee may direct a trustee to exercise or directly exercise the power of sale under the Mortgage as provided by law. Before exercising the power of sale, the trustee or Leasehold Mortgagee shall first offer to Landlord the right to purchase all right, title, and interest in the leasehold encumbered by the Mortgage directly from the trustee and without public sale for the then outstanding balance due on the note or notes secured by the deed of trust, plus trustee's fees and costs of sale. The trustee or Leasehold Mortgagee's offer to Landlord must be made no later than ten (10) business days following the recording of the trustee's notice of default, and Landlord may exercise the option to purchase within sixty (60) business days following the recording. Any foreclosure of the deed of trust will not affect Landlord's right, title, or interest in or to the Demised Premises or this Lease.
- 6. If Landlord elects not to purchase the Leasehold Mortgagee's interest pursuant to subparagraph 5 above, the Leasehold Mortgagee may:

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- a. Pursuant to the Mortgage and as provided by law, cause Tenant's interest in this Lease to be transferred at foreclosure sale, to be judicially foreclosed, or to be conveyed by deed in lieu of foreclosure; or
- b. Upon Landlord's prior approval, which approval may not be unreasonably withheld, conditioned or delayed, cause Tenant's interest in this Lease to be transferred or assigned to a federal- or state-chartered bank, savings-and-loan association, or insurance company. Landlord's prior approval is not required to assign or transfer the Lease to a financial institution acting as a bond trustee if the institution possess at least \$500,000,000 in assets and if the institution is regulated, supervised, and controlled by an agency or department of the United States or an agency or department of the State of Texas having jurisdiction over banks, savings-and-and loan associations, or similar financial institutions (the "Bond Trustee").
- 7. If the Leasehold Mortgagee forecloses the Mortgage, or if Tenant executes and delivers a deed in lieu of foreclosure, then Landlord may deem the purchaser at the foreclosure sale or the grantee under the deed in lieu of foreclosure as an assignee of this Lease, and Landlord may permit the purchaser or grantee to assume Tenant's duties and obligations under this Lease as Tenant's successor from the date Landlord approves the purchaser or grantee as assignee of this Lease. The foreclosure will not affect Landlord's rights, title, or interest in or to the Demised Premises or this Lease.
- Landlord further agrees to execute and deliver to any proposed Leasehold Mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such Leasehold Mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such Leasehold Mortgagee performs all of the obligations of Tenant hereunder and is not in default; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such Leasehold Mortgagee or its successors and assigns after foreclosure or transfer in lieu of foreclosure shall not and does not have the right and shall not and does not have the power to assign (as defined in subsection A. of this Section above) this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such Leasehold Mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed Leasehold Mortgagee any other documents which such proposed Leasehold Mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the Mortgage of such proposed Leasehold Mortgagee. If the Leasehold Mortgagee succeeds to Tenant's interest under this Lease, the Leasehold Mortgagee shall attorn to Landlord as if it were the Tenant under this Lease. The Leasehold Mortgagee's duty to so attom to Landlord arises immediately upon the Leasehold Mortgagee succeeding to Tenant's interest under this Lease, and the duty to attorn is self-executing, requiring no formal writing or further action by Landlord or the Leasehold Mortgagee.

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- Additional Leasehold Mortgagee Protections are set forth in <u>Lease Addendum #4</u> to this Lease.
- 10. Tenant's present and future Leasehold Mortgagee and any present and future mortgagees or similar beneficiaries are intended third party beneficiaries to this <u>Section 9 and Lease Addendum #4</u> of the Lease. As third-party beneficiaries, they are entitled to the applicable rights under and may enforce the provisions of this <u>Section 9</u> and <u>Lease Addendum #4</u> (as amended, supplemented or replaced from time to time) of the Lease as if they were parties thereto.

Section 10. Property Taxes and Assessments:

Following the Commencement Date, Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such Taxes have been paid by Tenant. In the event Tenant shall fail to pay any such Taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all Taxes to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to affect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense, Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof. Notwithstanding the foregoing, Tenant shall not contest the determination that the buildings and/or improvements are subject to taxation. If a final (non-appealable) determination is rendered by Dallas Central Appraisal District or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to Landlord in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, Rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

Section 11. Maintenance and Repair of Demised Premises:

A. Tenant shall, throughout the Term hereof, maintain in good repair and in a first class condition (as defined in <u>Lease Addendum #1</u>) (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison) all the Demised Premises and all buildings, improvements, fixtures, equipment and personal property

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(excluding aircraft stored in the Building Improvements) on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison), with all fixtures and equipment situated in the Demised Premises in good working order, reasonable wear and tear excepted.

B. Notwithstanding the foregoing, set forth as Lease Addendum #1 attached hereto and incorporated herein by reference and made a part hereof, are "Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices," which are intended as maintenance and repair standards and practices Landlord expects of Tenant. Tenant (and any of its successors or assigns) hereby agrees to meet or exceed the Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices throughout the Term. Notwithstanding the foregoing, as provided in Section 18 below, Landlord reserves the right, in its sole discretion, to introduce and adopt other regulations deemed appropriate and necessary by Landlord for the purpose, among other things, protection of the property of Landlord. In the event Landlord should formally adopt similar leasehold maintenance and repair standards governing such practices of all ground leaseholds at the Airport ("Replacement Maintenance Standards"), such encompassing regulations and practices shall supersede and replace Lease Addendum #1 in its entirety upon the effective date of such Replacement Maintenance Standards for the duration of the Term or until otherwise modified, repealed, or revised by Landlord.

Section 12. Alterations, Additions and Improvements:

After completion of the Building Improvements described in <u>Section 6</u>, Tenant shall not create any openings in the roof or exterior walls or make any other structural changes to the Demised Premises or any improvements without the prior written consent of Landlord or Airport Manager which shall not be unreasonably conditioned, delayed or withheld. Consent of Landlord is not required to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and requirements set out above and in <u>Lease Addendum #3</u> (including applicable indemnity obligations) and <u>Section 8</u>, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Airport Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in Section 6).

Section 13. Insurance:

A. Unless otherwise specified herein, at all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in

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a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:

- 1. Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming coinsurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be affected.
- 2. During the Term, Tenant shall maintain Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
- Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000 each occurrence each accident/\$1,000,000 by disease each occurrence/\$1,000,000 by disease aggregate.
- 4. If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000 for damage to or destruction of property resulting from such perils.
- 5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
- 6. During the Term, Tenant shall maintain Hangarkeepers Legal Liability insurance, at limits of \$1,000,000 per occurrence if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.
- 7. During the Term, aircraft liability insurance against third-party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any

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subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.

- 8. Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000 for bodily injury and property damage.
- 9. If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by Landlord, Tenant shall maintain a minimum of \$1,000,000 in Pollution Liability Insurance coverage, which may be satisfied through sudden and accidental pollution coverage under Tenant's commercial general liability policy.
- 10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained and commercially reasonable within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.
- B. Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:
- Landlord, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds, or loss payees as the case may be, except with respect to the professional liability policies and workers compensation insurance;
- 2. All insurance policies which name Landlord and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance:
- A waiver of subrogation in favor of Landlord and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;
- 4. All insurance policies shall be endorsed to the effect that Landlord and the Airport Manager will receive at least thirty (30) business days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) business days);
- All insurance policies shall be endorsed to require the insurer to immediately notify Landlord and the Airport Manager of any material change in the insurance coverages;
- All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of Landlord or the Airport Manager;
- 7. Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and

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- Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:
- List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and
- Specifically set forth the notice-of-cancellation or termination provisions to Landlord and the Airport Manager.
- **D.** Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

Section 14. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.
- B. In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof, except when said damage or destruction is a direct result of Landlord's, gross negligence or willful misconduct, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6 (including Lease Addendum #3), 8, and 13 hereof.
- C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with <u>Sections 6 and 21</u> hereof and

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other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.

- D. Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ("Net Insurance Proceeds")) shall be applied as follows:
- 1. Net Insurance Proceeds as defined above shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
- 2. Upon receipt by Landlord of the certificate and opinion required by the foregoing clauses (i) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmans' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.
- E. In the event Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same shall be an Event of Default by Tenant pursuant to notice and cure in Section 23 of this Lease. Landlord shall have the right, but not the obligation, to commence or complete Restoration as described hereinafter. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) business days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) business day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.
- F. In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration as required by Section 14(E) above, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the Term of this Lease. All insurance proceeds, if any are remaining and/or available subject to another secured interest on the property, shall be paid to the Landlord.

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Section 15. Condemnation:

- A. If during the Term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises in Tenant's sole discretion is not susceptible to efficient and economic occupation and operation by Tenant, Tenant shall have the right to terminate this Lease as of the date that said condemning authority takes possession of the Demised Premises, and Landlord shall refund to Tenant any prepaid but unaccrued Rent less any sum then owing by Tenant to Landlord. In the event of the termination of this Lease as a result of any such taking, each of Landlord and Tenant shall be entitled to make and pursue or to settle, compromise and adjust and to receive any award or proceeds payable on account of its own separate claim for the value of the rights and interests so taken as if this Lease would have remained in effect for the full Term but for such taking.
- B. If after such taking by or sale to said condemning authority Tenant determines the remainder of the Demised Premises in Tenant's sole discretion is susceptible to efficient and economic occupation and operation by Tenant, subject to Landlord's consent which shall not be unreasonably withheld, conditioned or delayed this Lease shall not terminate but the Base Rent 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 Base Rent payment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The rental adjustment called for herein shall not commence until said condemning authority takes actual possession of the condemned portion of the Demised Premises.
- C. If this Lease is not terminated pursuant to <u>Section 15.A.</u>, above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant. If this Lease is terminated pursuant to <u>Section 15.A.</u>, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant. Each of Landlord and Tenant shall be entitled to make and pursue or to settle, compromise and adjust its own separate claim for the value of the rights and interests so taken as if this Lease would have remained in effect as to the portion of the property so taken for the full Term but for such taking. Landlord shall be entitled to retain any amount awarded for the taking of any right, title or interest of Landlord free of any right or claim of Tenant or any Leasehold Mortgagee. Tenant shall be entitled to retain any amount awarded for the taking of any right, title or interest of Tenant hereunder, subject to the provisions of this Section and subject to the rights of any Leasehold Mortgagee.
- **D.** Landlord and Tenant shall both have the right, at each's own expense, to appear in any commendation proceeding and participate in any and all hearings, trials and appeals therein.

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E. In the event that either Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Demised Premises or any part thereof, the party receiving such notice shall promptly notify the other party of such notice and contents thereof.

Section 16. Utilities:

Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the Term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities:

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 Demised Premises, other Airport installations, and all other reasonable services which may be provided with or 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, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

Section 18. Airport Governing Documents:

Landlord, in its sole and absolute discretion, shall have the right from time to time to adopt, amend, modify, alter, and terminate in a reasonable manner certain rules and regulations, standards of operations, policies, procedures and practices deemed necessary and appropriate for the purpose of assuring the safety, welfare, fairness and equality without unjust discrimination, convenience and protection of property of Landlord, Tenant, other tenants and users of the Airport, their customers, and the general public (herein collectively referred to as the "Airport Governing Documents.") Tenant hereby agrees to comply fully at all times with these Airport Governing Documents.

As of the Effective Date of this Lease such Airport Governing Documents include, without limitation:

- Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers vr. 2004 (also commonly referred to as the "Minimum Standards" or "Airport Minimum Standards"); and
- Addison Airport Rules and Regulations vr. 2010 (also commonly referred to as the "Rules and Regulations" or "Airport Rules and Regulations"), which shall govern Tenant's use of the Demised Premises and all Common Facilities of the Airport; and

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- 3. Addison Airport Rates and Charges a schedule of the current rates, fees and charges assessed by the Airport for various services and facilities, which are generally approved in connection with the Airport's annual budgetary process but may be amended from time to time as deemed reasonable and appropriate.
- 4. Landlord has also adopted the National Business Aviation Association (NBAA) Noise Abatement Program (https://nbaa.org/aircraft-operations/environment/noise-abatement-program) revised in 2015. Unless Landlord adopts a noise abatement program of its own, Tenant and Tenant's subtenants and their aeronautical guest and invitees are required to comply with NBAA's recommended noise abatement procedures, which are suitable for any aircraft type and airport operating environment.

Section 19. Signs and Equipment:

After first securing Landlord's approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised 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, and regulations, including the Town of Addison 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 FAA).

Section 20. Landlord's Right of Entry:

Landlord and Landlord's authorized representatives shall have the right, during normal business hours and upon reasonable notice to Tenant, to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) during the final one hundred eighty (180) days of the Term to show the Demised Premises to any prospective tenant or purchaser, or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the Term, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity and Exculpation:

Exculpation.

Landlord 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 Demised Premises or any adjacent area owned by Landlord caused by or

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resulting from any act or omission of Tenant or any Tenant Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the 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, and its elected officials, officers, employees, agents, representatives, and volunteers of the Town of Addison, individually or collectively, in both their official and private capacities (the Town of Addison, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison each being an "Addison Person" and collectively the "Addison Persons") and (ii) Airport Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and agents each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the Demised Premises, whether directly or indirectly, (collectively for purposes of this subparagraph B, "Damages), that result from, relate to, or arise out of, in whole or in part, from:

- 1. Any condition of the Demised Premises caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, subtenants, 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 subtenants, or any other person entering the Demised Premises under express or implied invitation of Tenant during the Term (collectively, "Tenant Persons"); and
- 2. Any construction on or repair to the Demised Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling, and
 - Representations or warranties by Tenant under this Lease; and/or
- 4. 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 OF LANDLORD, ANY OTHER ADDISON PERSON,

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THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY LANDLORD, 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 Landlord, 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 claims or demand at Tenants sole cost and expense. The Addison Persons or Manager Persons (as the case may be) shall have option and at their own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release.

Tenant hereby releases the Town of Addison, Texas and all other Addison Persons and Airport Manager and all other Manager Persons 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 for (i) any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) any loss or damage that may result from or be occasioned by or through the acts or omissions of Tenant or its subtenants, officers, employees, contractors, subcontractors or invitees relating to the demolition of the existing facilities, construction of the Improvements on the Demised Premises, or construction of any private, public, or quasi-public work, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. Nothing herein shall release the Landlord from (1) the obligation to deliver the Demised Premises vacant, free and clear of Hazardous Materials subject to the Remediation Plan; and (2) the obligation to hold harmless the Tenant for any claims arising out of the Tenant's remediation of the Demised Premises pursuant to the Landlord approved Remediation Plan (as defined in Lease Addendum #2), unless such claims

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are alleged or found to have been caused by, in whole or in part, the negligence or willful misconduct of Tenant or its subtenants, officers, employees, contractors, subcontractors or invitees.

D. The provisions of this <u>Section 21</u> shall survive the expiration or termination of this Lease.

Section 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 directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised 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 (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").
- Cleanup Laws: Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws"); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant, during the Term of this Lease, Tenant shall, at Tenant's own 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

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applicability of the Cleanup Laws to the Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

TENANT' S FURTHER INDEMNITY OBLIGATION. Tenant shall indemnify, defend, save and hold harmless landlord and all other Addison Persons, and Airport Manager from and against, and reimburse Landlord and all other Addison Persons, and Airport Manager and all other Manager Persons, for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings and losses of whatever kind or nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs (collectively for purposes of this subsection, damages) and all actions of any kind arising out of or in any way connected with, (i) the Tenant's generation, installation, storage, use, treatment, transporting, disposal or discharge of Hazardous Materials in or on the Demised Premises and/or any portion of the Airport, including the common facilities, or any property adjacent to the Airport, by Tenant or any Tenant Persons, and (ii) all fines, suits, procedures, claims and actions of any kind arising out of Tenants failure to provide all information, make all submissions and take all steps required by the authority under the cleanup laws or any other environmental law, rule, standard, regulation, or policy. 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 [but not the gross negligence or willful misconduct] of the Landlord, any other Landlord Person, Airport Manager, or any other Manager Person, or by any act or omission of Landlord, any other Landlord Person, Airport Manager, or any other Manager Person that may give rise to strict liability of any kind. However, to the extent gross negligence and/or willful misconduct are alleged simultaneously with claims requiring defense and indemnity herein. Tenant shall defend all claims alleged against the Landlord, and any other Landlord Person, and Airport Manager, and any other Manager Person. Tenant's liability under this indemnity obligation shall be reduced by that portion of the total amount of the damages (excluding defense fees and costs) equal to the indemnified persons or indemnified persons 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 indemnified persons' or indemnified persons' defense costs and attorneys' fees shall be reduced by a portion of the defense costs and attorneys' fees equal to the indemnified person's or indemnified persons' proportionate share of the negligence or conduct that would give rise to strict liability of any kind, that caused the loss. 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. <u>Environmental Notices</u>: Tenant shall promptly supply Landlord with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the EPA, the United States Occupational Safety and Health Administration ("OSHA"), the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.
- D. Any time during the Term should Tenant or Landlord have cause to procure an independent environmental investigative report, Tenant or Landlord shall promptly provide the other a complete copy of the final report.

Section 23. Default by Tenant:

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Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an "Event of Default" (herein so called) by Tenant under this Lease:

- A. Failure of Tenant to make any payment of Rent payable to Landlord 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) business days (the "10-day Grace Period") and such failure shall not be cured within ten (10) business days after written notice thereof (the "Cure Period") to Tenant (which Cure Period may overlap, in whole or in part, the 10-day Grace Period).
- B. Failure to pay or cause to be paid Taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is obligated to pay under the Lease and such failure shall continue for a period of thirty (30) business days after written notice thereof to Tenant.
- C. Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of Rent, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A and B of this Section 23 and such failure shall not be cured within thirty (30) business days after written notice thereof to Tenant setting forth such default; provided, however, in the event such failure is not susceptible of cure within such thirty (30) business day period, then Tenant shall advise Landlord in writing of the same, and such thirty (30) business day period shall be extended for an additional period of time (not to exceed an additional sixty (60) business days except in the case of Force Majeure (as defined in Section 42), in which event the Force Majeure provisions shall apply) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and has commenced to cure such failure within the initial thirty (30) business day period and thereafter diligently pursues such cure.
- **D.** Insolvency or the making of a transfer in fraud of creditors as determined by a court of law with jurisdiction over Tenant, 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 section or chapter of the Bankruptcy Code, 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 that is not dismissed within ninety (90) business days.
- 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 or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of ninety (90) consecutive days.
- H. Tenant is in default of any other lease or agreement with Landlord after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing

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permit or license issued by Landlord, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

Section 24. Remedies of Landlord:

- A. Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever.
 - Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant.
 - Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.
 - Recover unpaid Rent and any Damages (as defined below).
 - Sue for eviction, specific enforcement, equitable relief, Rent, Damages (as defined below), or any other available remedy.
 - Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within thirty (30) business days after Landlord delivers an invoice for any actual, out-ofpocket expenses Landlord incurred effecting compliance with Tenant's obligations.
 - Withhold or suspend any payment that this Lease would otherwise require Landlord to make.
 - 7. Charge interest on any amount not paid when due from the due date through the date of its payment at the Default Rate, which is the lesser of 18% per annum or the highest rate permitted by applicable law.
 - Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).
- B. For purpose of this Section, "<u>Damages</u>" includes, without limitation, all actual damages, incidental, and or consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (i) recovering possession of the Demised Premises, (ii) reasonable efforts to re-let the Demised Premises, including, without limitation, the costs of brokerage commissions, cleaning, make-ready, or repairing the Demised Premises for a substitute tenant or tenants for the remainder of the Term, (iii) collecting any money owed by Tenant, (iv) repairing any damage caused by any Tenant Persons,

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(v) performing any obligation of Tenant under the Lease, and (vi) any other loss or cost reasonably incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

- C. Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).
- D. Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or 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.

Section 25. Default by Landlord:

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential 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 recovery or entitle Tenant to take any action whatsoever with regard to the Demised 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. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

- A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding Rent payments due by Tenant to Landlord hereunder; or
- B. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum.

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.

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Section 26. Mitigation of Damages:

- A. In conjunction with any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than ninety (90) days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection set forth below), will undertake commercially reasonable efforts to market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord.
- B. Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:
 - Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Demised Premises until and unless Landlord obtains full and complete possession of the Demised Premises, including without limitation, the final and unappealable legal right to relet the Demised Premises free of any claim of Tenant.
 - Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at the Airport.
 - 3. Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at the Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.
 - 4. Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.
 - 5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.
 - Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.
 - 7. No Rent collected from a substitute tenant for any month in excess of the Rent due under the Lease for that month will be credited or offset against unpaid Rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable

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C. Tenant's right to seek actual Damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. 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 Demised Premises, which loss or damage is covered by valid and collectible casualty, 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), the parties hereby agree 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.

Section 28. Title to Improvements:

- A. Any and all improvements constructed, erected or otherwise made to the Demised Premises by or for Tenant, shall be owned by Tenant during the Term of this Lease as it may be amended or modified. The term "<u>improvements</u>" shall include, without limitation, the Building Improvements as defined in Section 6.
- B. Upon the termination of this Lease, whether by expiration of the Term (as it may be amended or modified) or, by reason of default on the part of Tenant, or for any other reason whatsoever, the improvements (including, without limitation, the Building Improvements), and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord. In such event (i) Tenant shall deliver up to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance to the prevailing *Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices*, as amended or modified, with all fixtures situated in the Demised Premises delivered in good working order, reasonable wear and tear excepted, and (ii) unless Tenant is in default at the time, Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense.
- C. Upon the expiration or early termination of this Lease, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the termination of this Lease and giving the effective date of said termination or expiration date.

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Section 29. Mechanics' and Materialmen's Liens; Lien for Rent; Waiver of Landlord Liens:

Tenant agrees to defend, indemnify and hold harmless to the full extent as provided in this Lease, the indemnified persons from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 39 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) business days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) business day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises, unless a shorter period of time is dictated by applicable law.

Section 30. [INTENTIONALLY OMITTED]

Section 31. Quiet Enjoyment and Subordination:

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the full Term of this Lease. 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 hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage. deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express condition that the lienholder executes a commercially reasonable subordination non-disturbance attornment ("SNDA") in which it is acknowledged 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 on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such Mortgage, 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 hereunder and attorn to the Landlord. 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 the foreclosure of such Mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis:

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 Demised Premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over:

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Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised 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) business days prior written notice to the other, at a monthly Rent equal to one hundred fifty percent (150%) of the Base Rent paid for the last month of the Term of this Lease.

Section 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. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration of this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 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 Demised 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 Demised Premises.

Section 36. Attorneys' Fees:

If, on account of any breach or default by either party to this Lease, it shall become necessary for either party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs incurred.

Section 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.

Section 38. Estoppel Certificates

Landlord and Tenant agree that from time to time, upon not less than ten (10) business days' prior written request by the other, it will deliver to the other an estoppel certificate stating:

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- That this Lease is in full force and effect and is unmodified except as set forth in said estoppel certificate.
- A true and correct and complete copy of the Lease with all amendments, assignments and modifications to the Lease are attached thereto (if so requested).
- There are no other agreements except as stated therein between Landlord and Tenant concerning the Demised Premises or otherwise affecting the Lease.
- Affirming the Commencement Date and scheduled Expiration Date, unless earlier terminated
- The amount and status of the Rent and other amounts due under this Lease as of the date
 of certification.
- Whether this Lease has been modified or amended and, if so, describing with specificity the modifications or amendments.
- Schedule of all subleases then in effect and a true and correct copy of each sublease, if so requested.
- viii. Any Mortgage in effect encumbering the Demised Premises
- ix. That to the party's current knowledge, there is no default or breach of this Lease or any matter exists that, with the passage of time, will result in a default or breach, and describing with specificity the nature of the default or breach.
- x. Amount of any Security Deposit, Tenant has on account with Landlord, if any.
- Tenant has not paid Rent more than one (1) year in advance.

Section 39. Interest on Tenant's Obligations and Manner of Payment:

All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) business 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 in writing) shall bear interest at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) from and after said tenth (10th) business 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 cash, 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. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

Section 40. Special Events:

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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") and Tenant agrees and consents to the same. 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 Demised 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 obstruct access to the Demised Premises and/or to the Airport, (ii) releases, waives and discharges Landlord and Airport Manager, and Landlord Persons and Manager Persons, 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 Demised 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 Airport Manager, or any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section 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 Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Independent Contractor:

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

Section 42. Force Majeure:

Neither party shall be deemed in default of this Lease for any delay or failure to perform any obligation hereunder (other than a payment obligation) so long as and to the extent to which any delay or failure in the performance of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event (defined below); provided that the party prevented or delayed in performing an obligation under this Lease due to a Force Majeure Event shall promptly notify the other party (to be confirmed in writing within seventy-two (72) hours of the inception of the delay) of the occurrence of a Force Majeure Event and shall describe, in reasonable detail, the circumstances constituting the Force Majeure Event and the obligation and/or performance thereby delayed or prevented. The party claiming that a Force Majeure Event has occurred shall continue to use commercially reasonable efforts to mitigate the impact or consequence of the event on the other party and to recommence performance whenever and to whatever extent possible without unreasonable delay. The party affected by the event shall provide the other party with daily updates (and more frequent updates if requested) as to the status of its efforts to recommence performance and written notice upon conclusion of the Force Majeure Event. A "Force Majeure Event" occurs when either party is unable, other than as may arise from its own negligence or willful misconduct, to perform its obligations under the terms of this Lease (excluding Tenant's timely payment of Rent or any other payment obligation to Landlord hereunder) because of acts of God, military war, invasion,

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insurrection, riot, strike, lockout, inability to obtain labor or materials or reasonable substitutes therefore, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises (only in such cases and solely to the extent that the party's performance is frustrated as a direct result of the same), or other cause reasonably beyond its control.

Section 43. 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.

Section 44. 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. The terms "day", "week,", "month", "year" or any plural form of said terms shall be construed to mean on a calendar basis unless expressly stated otherwise. For the purposes herein, the term "business day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Texas are authorized or required by law or other governmental action to close.

Section 45. Captions:

The captions or headings, sections, 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

Section 46. Successors; No Third-Party Beneficiaries; No Waiver of Immunity; No Tax Representation:

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.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which Landlord, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

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Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability:

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to fully give effect to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the Term of this Lease does not exceed the statutory limit of forty (40) years (480 months); if it should be determined that the Term of this Lease exceeds such period of time, the Term hereof shall be reformed so as to make the Term hereof not exceed such period of time.

Section 48. Notices:

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001

Email: wpierson@addisontx.gov

and

Town of Addison, Texas c/o Addison Airport Manager Addison Hangars LLC c/o General Counsel

TO TENANT:

Addison Hangars LLC

Chief Operating Officer

136 Tower Road, Suite 205

Westchester County Airport White Plains, NY 10604

Email: asaltzman@skyharbour.group

c/o Alex Saltzman

ADS Ground Lease #0680-05

Page 37 of 83

and

4545 Jimmy Doolittle Road, Suite 200 Addison, Texas 75001 Attn: Real Estate Manager Email: bill.dyer@addisonairport.net

136 Tower Road, Suite 205 Westchester County Airport White Plains, NY 10604

and

and

Town of Addison, Texas City Attomey P.O. Box 9010 Addison, Texas 75001 Alison L. Squiccimarro, Esq. Law Offices of Paul A. Lange, LLC 80 Ferry Blvd. Stratford, CT 06611

Email: als@lopal.com

Section 49. 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.

Section 50. 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. This Lease may be executed and delivered by electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

Section 51. Consent; "Includes" and "Including"; Recitals:

Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord delaying consent, it shall be deemed reasonable for Landlord to delay its consent for a period of thirty (30) business days after the receipt by Landlord of request of Landlord's consent under this Lease.

For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

Section 52. Governing Law and Venue:

Page 38 of 83

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, without regard to "choice of laws" rules of any jurisdiction. All suits, actions or legal proceedings relating to this Lease shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

Section 53. Survivability of Rights and Remedies:

Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the Term hereof shall survive the cancellation, expiration or termination of this Lease. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE PARTIES OBLIGATIONS AND LIABILITIES OF THE PARTIES PURSUANT <u>SECTIONS</u> 6, 21, 22, 28 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE AS DEEMED NECESSARY FOR THE ENFORCEMENT OF THE PARTIES RIGHTS AND OBLIGATIONS THEREUNDER.

Section 54. Entire Agreement and Amendments; Authorized Persons:

This Lease, consisting of fifty-four (54) Sections and Exhibits 1, 2, 3, 4, 5, and 6 together with Lease Addendum #1, #2, #3 and #4 attached hereto, 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.

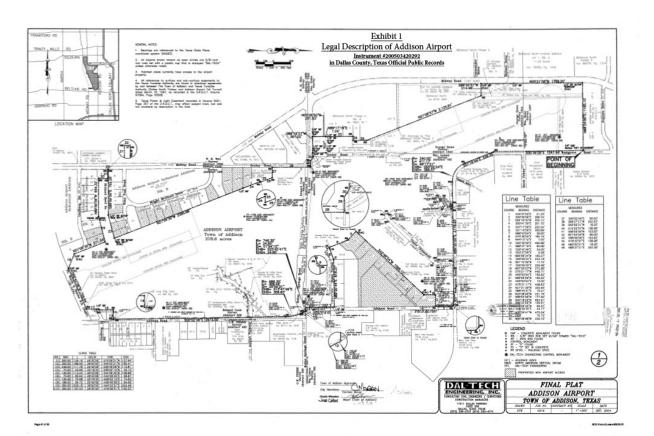
[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY – SIGNATURES ON FOLLOWING PAGE(S)]

Page 39 of 83

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

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

TENANT:	LANDLORD:
Addison Hangars, LLC	TOWN OF ADDISON, TEXAS
By: Must Alex SACtamer Manager Its: Authorized Signor	By: Wesley S. Pierson, City Manager
ACKNOWI	LEDGEMENTS
S. Pierson, City Manager of the Town of Addison, I said municipality.	ne on, 202_, by Wesley Texas, a home-rule municipality, on behalf of the EAL OF OFFICE, this the day of
Notary Public, State of Texas	
This instrument was acknowledged before the said company, on behalf of the said company, on behalf of the said company.	of Addison Hangars, LLC a Delaware pany.
Notary Public JANETTE LICASTRINO Notary Public Notary Not	EAL OF OFFICE, this the 2010 day of
Page 40 of 83	ADS Ground Lease #0680-05



THENVE South 50 degrees 38 minutes 59 seconds East, o distance of 485.85 feet to a 5/8 inch han not set with any stamped TAK-TEOM in the approved common survey fine between the obsessió William Lamos Survey, Rostract No. 792 and the otherwise E. Cost Survey, Assistant No. 792 and the otherwise E. Cost Survey, Assistant No. 395. THINCE North 21 degrees DE relocates 30 seconds Beed, stong the offeredd existery live of sold Address Algori Industrial Dallate, addition, a distance of 2,385.80 feet record to a 1/2 lock live red found; Control Monument | Company | Comp TeXTEX Nucle 27 degrees 01 minute 28 execute Next, o distance of 20054 feet to 0.5/5 lest how red set alto our stamped "260-100"). TEXTEX Nucle 30 degrees 44 minute 23 seconds Cast, o distance of 10.21 feet to 0.5/6 lest not not set alto our stamped "260-100"). 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TSDECE North 68 degrees 43 minutes 04 seconds East, a distance of 35.00
feet to a prisoned crisis set in concepts; THENCE North 75 degrees 35 minutes 55 seconds Cost, a distance of 185.74 feet to 0 5/8 inch look not set with cap stamped "DML-TEDM". THEREX North 76 degrees 21 minutes 17 seconds (set, a distance of 406.62 feet to α 1/2 inch ince not found with cap stomped 96.64 §2517; THENCE North 44 degrees 10 minutes 12 secured back, a children of 7.60 feet to 4.65 km² has not ask with cap standard Fac.—ECA", said point a the captured behaves the children Adelban Alphan Paul child has about an extra TABLES North BB degrees 20 minutes 44 seconds East, since the common for and Addison Roan't fact ont the each fire of said CA. Broughton You'd fact of about 20 Milkoy from 5.00 Milkoy from collection of advanced of advanced CA. Brownian CA $\binom{2}{2}$ FINAL PLAT DAL-TECH Tour of Andrew Agency Company
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Town of Addison, Texas Resolution No.

Exhibit 2 - Survey of "Demised Premises"

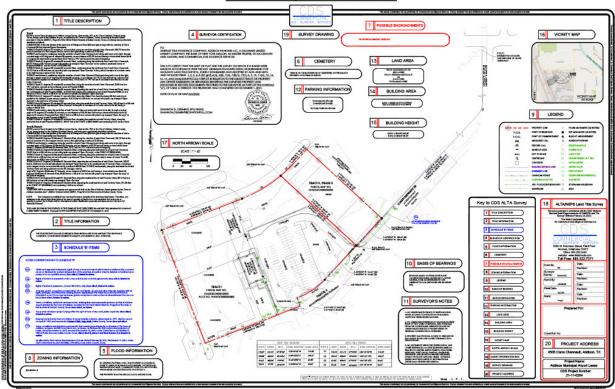


Exhibit 3

Legal Description of the "Demised Premises

Tract I:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being a part of the Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Official Public Records of Dallas County, Texas, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress-Egress Easement);

THENCE South 00 degrees 32 minutes 21 seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 degrees 40 minutes 00 seconds, an arc distance of 53.35 feet and having a chord which bears South 21 degrees 05 minutes 00 seconds West, 52.07 feet to a "PK" nail found at the point of tangency;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 882.93 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the southerly southeast corner of Property # 068B-01 and the POINT of BEGINNING;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 161.52 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the right having a radius of 241.10 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault Road and along said curve to the right, through a central angle of 27 degrees 30 minutes 06 seconds, an arc distance of 115.73 feet and having a chord which bears South 56 degrees 40 minutes 03 seconds West, 114.62 feet to a "PK" nail set in concrete in the west line of said Claire Chennault:

THENCE South 21 degrees 20 minutes 00 seconds East, along the west line of said Claire Chennault, 30.00 feet to a "PK" nail set in concrete at the northeast corner of Property # 0560;

THENCE South 68 degrees 40 minutes 00 seconds West, departing the west line of said Claire Chennault Road, along the northwest line of said Property # 0560, at 334.83 feet passing the northwest corner of said Property # 0560, in all a distance of 353.12 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

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THENCE North 21 degrees 07 minutes 31 seconds West, along the Object Free Area line being 400 feet east of and parallel to the Addison Airport runway centerline, 418.34 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the south line of Taxiway Victor;

THENCE North 68 degrees 35 minutes 58 seconds East, along the south line of said Taxiway Victor, 299.45 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the left having a radius of 485.00 feet;

THENCE northeasterly, along the south line of said Taxiway Victor and along said curve to the left, through a central angle of 18 degrees 25 minutes 20 seconds, an arc distance of 155.94 feet and having a chord which bears North 59 degrees 23 minutes 18 seconds East, 155.27 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the westerly corner of said Property # 068B-01;

THENCE South 47 degrees 24 minutes 55 seconds East, departing the south line of said Taxiway Victor, along the southwest line of said Property # 068B-01, 355.97 feet to the POINT of BEGINNING and containing 5.014 acres of land.

Tract II, Phase II:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being located on the Addison Municipal Airport, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress/Egress Easement);

THENCE South 00 Degrees 32 Minutes 21 Seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 Degrees 40 Minutes 00 Seconds, and arc distance of 53.35 feet and having a chord which bears South 21 Degrees 05 Minutes 00 Seconds West, 52.07 feet to a "PK" nail at the point of tangency;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Clair Chennault, 754.63 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys", at the POINT OF BEGINNING;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Claire Chennault, 128.30 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the easterly corner of Lease Tract 68, also known as 4505 Claire Chennault;

THENCE North 47 Degrees 24 Minutes 55 Seconds West, departing the northwest line of said Claire Chennault, 355.97feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the southeast line of Taxiway Victor, and lying in a non-tangent circular

Page 45 of 83

curve to the left having a radius of 485.00 feet; THENCE northeasterly, along the southeast line of said Taxiway Victor and along said curve to the left, through a central angle of 07 Degrees 09 Minutes 47 Seconds, an arc distance of 60.63 feet and having a chord which bears North 46 Degrees 35 Minutes 45 Seconds East, 60.60 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of tangency;

THENCE North 43 Degrees 00 Minutes 51 Seconds East, along the southeast line of said Taxiway Victor, 68.14 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys"

THENCE South 47 Degrees 22 Minutes 09 Seconds East, departing the southeast line of said Taxiway Victor, 351.96 feet to the POINT OF BEGINNING and containing 1.040 acres of land.

Parcel II

TOGETHER WITH an easement for ingress and egress as set forth on the Plat of Addison Airport granted by the Town of Addison recorded July 7, 2005, in Volume/Cabinet 200531, Page 82 of the Plat records of Dallas County, Texas.

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<u>Exhibit 4</u> Description of New Building Improvements to Be Constructed



Note: Artist's rendering of proposed improvements, subject to permitting and approvals

Subject to site plan, design, and permitting approval, Sky Harbour intends to build the following:

- A total of ~101,000 vertical hangar and office space and adjacent apron, including:
 - Five (5) ~14,200 square foot (SF) SH-16 Hangars (~71,000 SF total)
 - o ~12,000 SF of hangar space (per hangar)
 - ~2,200 SF of private office/lounge/storage space with restrooms (per hangar)
 - o High-quality finishes and advanced hangar features
 - o Climate and humidity control
 - o Smart controls through Sky Harbour Smart Hangar smartphone app
 - o Indoor vehicle parking and, if economically feasible, PV and EV charging
- One (1) ~30,000 SF SH-30 Semi-private Hangar
 - o ~26,500 SF of hangar space
 - ~3,500 SF of private office/lounge/storage space with restrooms
 - Administration/Ground Support Equipment storage
- · Pavement for vehicle access and parking
 - o 63 landside parking stalls
 - o 13 airside parking spaces
- Native and drought-tolerant landscaping throughout the property (where possible)
- · Airside gates with access control

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Note: Artist's rendering of proposed improvements, subject to permitting and approvals

This Exhibit 4 hereby includes by reference the complete set of Design Plans approved by the Town of Addison for the New Building Improvements including, but not limited to, all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

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Exhibit 5-A

Form of Memorandum of Ground Lease - Effective Date

AFTER RECORDING RETURN TO:

Addison Airport Management c/o Real Estate Manager 16051 Addison Road, Suite 220 Addison, Texas 75001

MEMORANDUM OF LEASES

This Memorandum of Lease is dated as of _________, 2022, and executed by and between the Town of Addison, Texas, a home-rule municipality ("Landlord") and Addison Hangars, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH THAT:

In consideration of the premises and of the mutual covenants and agreements set forth in that certain Ground Lease Agreement dated and made Effective as of . 20 (the "Ground Lease"), by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, a certain parcel of land located at and within Addison Airport ("Airport") that is more particularly described in Exhibit A attached hereto and made a part hereof, for a term of four hundred eighty (480) months following the Commencement Date (as defined in the Ground Lease), subject to all of the terms, provisions and conditions of the Ground Lease.

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

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

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed the day and year first above written.

Page 49 of 83

TENANT:	_LANDLORD:		
By: AUT SAUTEMAN. Manage	By:		
≥ 50 of 83	ADS Ground Lease #0680-05		

ACKNOWLEDGEMENTS

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	§	
This instrument was ackn <u>Alex Salleman</u> , M company, on behalf of sai	lanager, of Addi	me on the 2011 day of June, 2022, by son Hangars, LLC, a Delaware limited liability
STATE OF TEXAS	<i>ത.ത.ത.</i>	Notary Public, State of New York Notary's Printed Name My Commission Expires: 9/7/305 JANETTE LICASTRINO Notary Public No. 01LI5017519 Qualified in Putnam County My Commission Expires 9/7/05
Wesley S. Pierson, City	owledged before Manager of t	me on theday of,2022, by the Town of Addison, Texas, a home-rule
municipality, on behalf of	the said munici	Notary Public, State of Texas
		Notary's Printed Name
		My Commission Expires:
ge 51 of 83		ADS Ground Lease #0680-05

EXHIBIT A

PROPERTY SURVEY AND LEGAL DESCRIPTION OF DEMISED PREMISES

Tract I:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being a part of the Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Official Public Records of Dallas County, Texas, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress-Egress Easement);

THENCE South 00 degrees 32 minutes 21 seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 degrees 40 minutes 00 seconds, an arc distance of 53.35 feet and having a chord which bears South 21 degrees 05 minutes 00 seconds West, 52.07 feet to a "PK" nail found at the point of tangency;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 882.93 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the southerly southeast corner of Property # 068B-01 and the POINT of BEGINNING;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 161.52 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the right having a radius of 241.10 feet:

THENCE southwesterly, continuing along the west line of said Claire Chennault Road and along said curve to the right, through a central angle of 27 degrees 30 minutes 06 seconds, an arc distance of 115.73 feet and having a chord which bears South 56 degrees 40 minutes 03 seconds West, 114.62 feet to a "PK" nail set in concrete in the west line of said Claire Chennault;

THENCE South 21 degrees 20 minutes 00 seconds East, along the west line of said Claire Chennault, 30.00 feet to a "PK" nail set in concrete at the northeast corner of Property # 0560:

THENCE South 68 degrees 40 minutes 00 seconds West, departing the west line of said Claire Chennault Road, along the northwest line of said Property # 0560, at 334.83 feet passing the northwest corner of said Property # 0560, in all a distance of 353.12 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

Page 52 of 83

THENCE North 21 degrees 07 minutes 31 seconds West, along the Object Free Area line being 400 feet east of and parallel to the Addison Airport runway centerline, 418.34 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the south line of Taxiway Victor;

THENCE North 68 degrees 35 minutes 58 seconds East, along the south line of said Taxiway Victor, 299.45 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the left having a radius of 485.00 feet;

THENCE northeasterly, along the south line of said Taxiway Victor and along said curve to the left, through a central angle of 18 degrees 25 minutes 20 seconds, an arc distance of 155.94 feet and having a chord which bears North 59 degrees 23 minutes 18 seconds East, 155.27 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the westerly corner of said Property # 068B-01;

THENCE South 47 degrees 24 minutes 55 seconds East, departing the south line of said Taxiway Victor, along the southwest line of said Property # 068B-01, 355.97 feet to the POINT of BEGINNING and containing 5.014 acres of land.

Tract II, Phase II:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being located on the Addison Municipal Airport, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress/Egress Easement);

THENCE South 00 Degrees 32 Minutes 21 Seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 Degrees 40 Minutes 00 Seconds, and arc distance of 53.35 feet and having a chord which bears South 21 Degrees 05 Minutes 00 Seconds West, 52.07 feet to a "PK" nail at the point of tangency;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Clair Chennault, 754.63 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys", at the POINT OF BEGINNING;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Claire Chennault, 128.30 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the easterly corner of Lease Tract 68, also known as 4505 Claire Chennault:

THENCE North 47 Degrees 24 Minutes 55 Seconds West, departing the northwest line of said Claire Chennault, 355.97feet to a 5/8-inch iron rod set with plastic cap stamped

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"Sparr Surveys" in the southeast line of Taxiway Victor, and lying in a non-tangent circular curve to the left having a radius of 485.00 feet; THENCE northeasterly, along the southeast line of said Taxiway Victor and along said curve to the left, through a central angle of 07 Degrees 09 Minutes 47 Seconds, an arc distance of 60.63 feet and having a chord which bears North 46 Degrees 35 Minutes 45 Seconds East, 60.60 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of tangency;

THENCE North 43 Degrees 00 Minutes 51 Seconds East, along the southeast line of said Taxiway Victor, 68.14 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys"

THENCE South 47 Degrees 22 Minutes 09 Seconds East, departing the southeast line of said Taxiway Victor, 351.96 feet to the POINT OF BEGINNING and containing 1.040 acres of land.

Parcel II

TOGETHER WITH an easement for ingress and egress as set forth on the Plat of Addison Airport granted by the Town of Addison recorded July 7, 2005, in Volume/Cabinet 200531, Page 82 of the Plat records of Dallas County, Texas.

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Exhibit 5-B

Form of Memorandum of Ground Lease - Commencement Date

AFTER RECORDING RETURN TO:

Addison Airport Management c/o Real Estate Manager 16051 Addison Road, Suite 220 Addison. Texas 75001

Addison, Texas 75001
MEMORANDUM OF LEASE
This Memorandum of Lease is dated as of, 20, and executed by and between the Town of Addison, Texas, a home-rule municipality (" <u>Landlord</u> ") and Addison Hangars, LLC, a Delaware limited liability company (" <u>Tenant</u> ").
WITNESSETH THAT:
WHEREAS, a Ground Lease was executed and made Effective on, 2022 (the "Ground Lease"), between the Landlord and Tenant as evidenced by that Memorandum of Lease filed and recorded in the Dallas County Official Records ("OPR") as Instrument #
Now let it be known, 20, is hereby the Commencement Date and the Ground Lease Term shall end the last day of the Four Hundred and Eightieth (480th) full calendar month following the Commencement Date (including the month of the Commencement Date), or, 20, subject to all of the terms, provisions and conditions of the Ground Lease.
This Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease, the provisions of the Ground Lease shall govern. Reference should be made to the Ground Lease for the full description of the rights and duties of Landlord and Tenant, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease or the interpretation of the rights and duties of Landlord and Tenant thereunder.
Upon the expiration or earlier termination of the above-described Ground Lease, Landlord and Tenant agree that they shall execute and record a termination of this Memorandum of Lease.
IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed the day and year first above written.

Town of Addison, Texas Resolution No.

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IN WITNESS WHEREOF,	the undersigned parties execute this Memorandum of
Lease this day of	, 20
TENANT:	_LANDLORD:
ADDISON HANGARS, LLC	TOWN OF ADDISON, TEXAS
By:	By:
12	Manager, City Manager

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ACKNOWLEDGEMENTS

STATE OF TEXAS COUNTY OF DALLAS	999	
This instrument was acknown on the company, on behalf of sain	lanager, of Ad	re me on theday of,20, by dison Hangars, LLC, a Delaware limited liability
		Notary Public, State of
		Notary's Printed Name My Commission Expires:
STATE OF TEXAS	3	Sign C. Louise province also designed as \$10,000.
COUNTY OF DALLAS	<i>\$</i>	
		re me on the day of,20, by of the Town of Addison, Texas, a home-rule cipality.
		Notary Public, State of Texas
		Notary's Printed Name My Commission Expires:

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EXHIBIT A

PROPERTY SURVEY AND LEGAL DESCRIPTION OF DEMISED PREMISES

Tract I:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being a part of the Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Official Public Records of Dallas County, Texas, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress-Egress Easement);

THENCE South 00 degrees 32 minutes 21 seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 degrees 40 minutes 00 seconds, an arc distance of 53.35 feet and having a chord which bears South 21 degrees 05 minutes 00 seconds West, 52.07 feet to a "PK" nail found at the point of tangency;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 882.93 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the southerly southeast corner of Property # 068B-01 and the POINT of BEGINNING;

THENCE South 42 degrees 55 minutes 00 seconds West, continuing along the northwest line of said Claire Chennault, 161.52 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the right having a radius of 241.10 feet:

THENCE southwesterly, continuing along the west line of said Claire Chennault Road and along said curve to the right, through a central angle of 27 degrees 30 minutes 06 seconds, an arc distance of 115.73 feet and having a chord which bears South 56 degrees 40 minutes 03 seconds West, 114.62 feet to a "PK" nail set in concrete in the west line of said Claire Chennault;

THENCE South 21 degrees 20 minutes 00 seconds East, along the west line of said Claire Chennault, 30.00 feet to a "PK" nail set in concrete at the northeast corner of Property # 0560:

THENCE South 68 degrees 40 minutes 00 seconds West, departing the west line of said Claire Chennault Road, along the northwest line of said Property # 0560, at 334.83 feet passing the northwest corner of said Property # 0560, in all a distance of 353.12 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

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THENCE North 21 degrees 07 minutes 31 seconds West, along the Object Free Area line being 400 feet east of and parallel to the Addison Airport runway centerline, 418.34 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the south line of Taxiway Victor;

THENCE North 68 degrees 35 minutes 58 seconds East, along the south line of said Taxiway Victor, 299.45 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of curvature of a circular curve to the left having a radius of 485.00 feet;

THENCE northeasterly, along the south line of said Taxiway Victor and along said curve to the left, through a central angle of 18 degrees 25 minutes 20 seconds, an arc distance of 155.94 feet and having a chord which bears North 59 degrees 23 minutes 18 seconds East, 155.27 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the westerly corner of said Property # 068B-01;

THENCE South 47 degrees 24 minutes 55 seconds East, departing the south line of said Taxiway Victor, along the southwest line of said Property # 068B-01, 355.97 feet to the POINT of BEGINNING and containing 5.014 acres of land.

Tract II, Phase II:

BEING a tract of land situated in the William Lomax Survey, Abstract No. 792, in the City of Addison, Dallas County, Texas, being located on the Addison Municipal Airport, and being more particularly described as follows:

COMMENCING at the intersection of the south line of Westgrove Road (60-foot right-of-way) with the west line of Claire Chennault (60-foot Ingress/Egress Easement);

THENCE South 00 Degrees 32 Minutes 21 Seconds East, along the west line of said Claire Chennault, 256.76 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 70.00 feet;

THENCE southwesterly, continuing along the west line of said Claire Chennault and along said curve to the right, through a central angle of 43 Degrees 40 Minutes 00 Seconds, and arc distance of 53.35 feet and having a chord which bears South 21 Degrees 05 Minutes 00 Seconds West, 52.07 feet to a "PK" nail at the point of tangency;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Clair Chennault, 754.63 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys", at the POINT OF BEGINNING;

THENCE South 42 Degrees 55 Minutes 00 Seconds West, continuing along the northwest line of said Claire Chennault, 128.30 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the easterly corner of Lease Tract 68, also known as 4505 Claire Chennault,

THENCE North 47 Degrees 24 Minutes 55 Seconds West, departing the northwest line of said Claire Chennault, 355.97feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the southeast line of Taxiway Victor, and lying in a non-tangent circular

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curve to the left having a radius of 485.00 feet; THENCE northeasterly, along the southeast line of said Taxiway Victor and along said curve to the left, through a central angle of 07 Degrees 09 Minutes 47 Seconds, an arc distance of 60.63 feet and having a chord which bears North 46 Degrees 35 Minutes 45 Seconds East, 60.60 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" at the point of tangency;

THENCE North 43 Degrees 00 Minutes 51 Seconds East, along the southeast line of said Taxiway Victor, 68.14 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys"

THENCE South 47 Degrees 22 Minutes 09 Seconds East, departing the southeast line of said Taxiway Victor, 351.96 feet to the POINT OF BEGINNING and containing 1.040 acres of land.

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TOGETHER WITH an easement for ingress and egress as set forth on the Plat of Addison Airport granted by the Town of Addison recorded July 7, 2005, in Volume/Cabinet 200531, Page 82 of the Plat records of Dallas County, Texas.

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Exhibit 6

Master Landlord Sublease Consent Form

MASTER LANDLORD'S CONSENT TO SUBLEASE

Rider to Sublease Agreement

GROUI	ND LEASI	LIENA	MI &	MASIE	K LEASI	LIN	FURMATION
Name of Tenant as "Tenant"							
Primary Contact							
Legal Notice Address:							
Telephone:					Ground	Lea	se No:
E-mail Address:					Dentil Period of Life and Leaving		te of Ground Lease:
SUBLEASE A	GREEM	ENT (t	he "Sı	ıblease	")		
Sublease Agreem	ent Date:	S 0.	Con	nmence	ment Date	<u> </u>	Expiration Date:
(A)							80-82
Address of Suble							
Describe Renewa	l Options	(if applic	cable):				
6 0	10.5				10		
Subtenant Name: as "Subtenant"						app	"State" of Registration (if licable)
Entity Type							
DBA:							
Primary Contact:							Title:
Legal Notice Address:							
Telephone:							E-mail:
Website:							

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ON-SITE CONTACT INFORMATION

Name:	Title:	
Telephone:	E-mail	

EMERGENCY / AFTER HOURS CONTACT INFORMATION

Name:	Title:
Telephone:	F-mail

BASED AIRCRAFT REGISTRATION (use an additional sheet if needed)

N#	Make	Model	Year

(Underlined terms are defined as first given above)

The Town of Addison, Texas (the "Master Landlord") is the sole Landlord under that certain Ground Lease/Lease Agreement dated as of the Master Lease Effective Date wherein by way of any assignment, amendment, modification or other act, the above-named Tenant is the "Tenant" of the Ground Lease/Lease Agreement described above. Together with any and all assignments, modifications and amendments thereto, if any, the Ground Lease/Lease Agreement is hereinafter referred to as the "Master Lease," by the terms of which Tenant leased from Master Landlord certain property referred to as the "Demised Premises," "Leased Premises," or "Premises" (or such similar term) in the Master Lease (referred to herein as the "Demised Premises") located at Addison Airport within the Town of Addison, Texas, said property being more particularly described in said Master Lease. Tenant is hereby seeking Master Landlord's consent to the sublease ("Consent to Sublease") by Tenant of all or a part of the Demised Premises, which part is described in the Sublease, to the Subtenant so named above, pursuant to that Sublease Agreement described above (the "Sublease"), on the following terms and conditions:

Based on Tenant's representations, Master Landlord hereby consents to the Sublease on the following terms and conditions:

1. Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Master Lease including, without limitation, the duty to make any and all payments of rent. This Consent to Sublease shall in no way release Tenant from any of its covenants, agreements, liabilities and duties under the Master Lease. Upon written demand by Master Landlord, Tenant and/or Subtenant shall deliver a true and correct copy of the Sublease as it may be amended or modified from time to time. This Consent to Sublease does not constitute approval by Master Landlord of the terms of the Sublease. Nothing herein contained shall be deemed a waiver or release of any of the Master Landlord's rights under the Master Lease.

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- 2. Subtenant's use and occupancy of the Demised Premises shall be subject to all of the terms and conditions of the Master Lease to the extent applicable, Subtenant agrees to be bound by the terms and provisions of the Master Lease and in the event of any conflict between the terms of the Master Lease and the terms of the Sublease, the terms of the Master Lease shall control (and, without limiting the foregoing, the Demised Premises shall never be used for any purpose other than as permitted by the Master Lease, and this Consent to Sublease does not constitute and is not consent to any use on or within the Demised Premises which is not permitted by the Master Lease).
- 3. Subtenant shall be obligated to obtain Master Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Master Lease.
- Tenant shall be fully liable for any violation by Subtenant of any of the terms and conditions
 of the Master Lease.
- 5. Master Landlord shall have no obligation for the performance by Tenant of its obligations under the Sublease. Neither this Consent to Sublease, the exercise by Master Landlord of its rights hereunder, nor the Sublease or any other instrument shall give Subtenant any rights directly or indirectly against Master Landlord or create or impose any obligation, duty, responsibility, or liability of Master Landlord in favor of or for the benefit of Subtenant.
- 6. In the event of the occurrence of an event of default under the Master Lease by Tenant while the Sublease is in effect, Master Landlord, in addition to any other rights or remedies provided in the Master Lease or by law, in equity, or otherwise, may at Master Landlord's option, collect directly from the Subtenant all rents becoming due under the Sublease and apply such rent against any sums due to Master Landlord. No direct collection by Master Landlord from Subtenant shall release Tenant from the payment or performance of Tenant's obligations under the Master Lease; provided that if Master Landlord collects any rents directly from Subtenant pursuant to this paragraph, Subtenant shall be released from its obligations to pay such rents to Tenant.
- 7. Tenant and Subtenant each hereby represent and warrant to Master Landlord that other than the Sublease, there are no agreements or understandings, whether written or oral between Tenant and Subtenant with respect to Subtenant's use and occupancy of the Demised Premises or any property of Tenant located therein.
- 8. Tenant and Subtenant each hereby covenants and agrees with Master Landlord that Tenant and Subtenant shall defend, indemnify and hold harmless Master Landlord, its elected officials, its officers, employees, representatives and agents from and against any and all claims, liabilities and obligations to any broker or agent in connection with the Sublease, including, without limitation, any reasonable attorneys' fees and costs incurred by Master Landlord in connection therewith.
- 9. If Subtenant is to operate as a commercial aeronautical service provider pursuant to the Sublease Agreement, Tenant hereby warrants and represents to Master Landlord that Tenant has delivered to Subtenant a complete copy of the prevailing Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers and the Addison Airport Rules and Regulations, each of which may be amended and, or modified by the Master Landlord from time to time, and Subtenant hereby acknowledges and warrants and represents to Master Landlord that Subtenant has received the same and shall comply with the requirements set forth therein.
- Tenant and Subtenant attest, warrant and represent to Master Landlord that all information given herein is true and correct.

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This Master Landlord's Consent to Sublease may be executed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement; the signatures of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile (e.g., telecopier, scanned PDF by email, or electronic signature) is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.

OWLEDGED AND AGREED TO this _	day of	, 20
Tenant:	Subtenant:	
Ву:	Ву:	
(Signature)	(Signature)	
(Printed Name)	(Printed Name)	
Title:	Title:	1995
Action The Control of	Date:	
Date:		
-1		
	Master Landlord Town of Addison, Texas	
	Ву:	
	Title: Authorized Officer on Behalf of M	faster Land
	Date:	

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LEASE ADDENDUM #1

Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices

Note: Capitalized terms used herein are the same as defined in the Lease or any Addendum attached and made a part of the Lease unless otherwise expressly provided for. This Lease Addendum #1 is made a part of and hereby incorporated into the Lease by reference.

I. Purpose: Pursuant to Section 11 (or elsewhere as provided for) of the Lease¹ the Tenant is required to maintain the Demised Premises and all improvements, fixtures, equipment and personal property thereto in "good repair and in a first class condition" and in accordance with all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison or any regulating agency with oversight of any or all portions of the Demised Premises throughout the Term as it may be extended or otherwise amended.

Additionally, <u>Section 28</u> titled <u>Title to Improvements</u> provides that, among other things, Tenant shall own and hold title to any Buildings Improvements constructed on the Demised Premises by or for Tenant, shall be owned by Tenant for the duration of the Term, as the Term may be amended or modified. Upon the expiration or early termination of the Lease Term, the ownership of said Building Improvements, said Building Improvements shall merge with the title of the Demised Premises and become the property of the Landlord.

Therefore, these <u>Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices</u> ("<u>Maintenance Standards</u>") hereby set forth in general the minimum level of standard of maintenance and repair or practice the Landlord expects of Tenant and Tenant (or any of its successors and or assigns) agrees to be obliged in order to comply with the terms and conditions of the Lease.

- II. Governing Standard or Practice: Section 8.A. of the Lease states the Tenant agrees to comply with all laws, ordinances, rules, regulations, directives, permits, policies or standards of any governmental authority, entity, or agency affecting the use of the Demised Premises; and any "Construction/Maintenance Standards and Specifications" published by Landlord or its Airport Manager governing such matters at the Airport. Section 11.B. of the Lease states "Should there ever arise a conflict between the degree of standard or duty to practice any such standard or practice between [these Maintenance Standards] and any new construction and maintenance and repair standard so adopted by the Landlord, the standard and/or practice representing the higher or greater degree of standard and/or practice shall prevail as if such higher degree of standard and/or practice is incorporated into and made a part of these [Maintenance Standards].
- III. Terminology Used: Unless otherwise provided herein, the definition and/or the description of certain terms used or referred to below shall be the same as defined in the
- All capitalized terms used in these Tenant's Minimum Leasehold Maintenance Standards and Procedures are as used and defined in the underlying Lease unless otherwise defined herein.

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Lease or ASTM International Standard E2018-15² (as it may be amended or modified from time to time or its equivalence as generally accepted by the United States commercial real estate industry at the time).

For the purpose herein the standard being in "good repair and in first-class condition" generally means when the building component or system is serving its designed function, is of working condition and operating well, shows evidence of being well taken care of and does not require immediate or short-term repairs above its *de minimis* threshold or does not evidence a material physical deficiency.

<u>Building System</u> – Interacting or independent components or assemblies, which form single integrated units that comprise a building and its site work, such as pavement and flatwork, structural frame, roofing, exterior walls, plumbing, HVAC, electrical, etc. (ASTM E2018-15).

<u>Component</u> – A portion of a building system, piece of equipment, or building element (ASTM E2018-15).

<u>Deferred Maintenance</u> – Physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property (ASTM E2018-15).

<u>Effective Age</u> – The estimated age of a building component that considers actual age as affected by maintenance history, location, weather conditions, and other factors. Effective Age may be more or less than actual age (ASTM E2018-15).

<u>Engineer</u>: Designation reserved by law for a person professionally qualified, examined, and licensed by the appropriate governmental board having jurisdiction, to perform engineering services (ASTM E2018-15).

<u>Expected Useful Life</u> – The average amount of time in years that an item, component or system is estimated to function without material repair when installed new and assuming routine maintenance is practiced (ASTM E2018-15).

<u>Fair Condition</u> – To be found in working condition but may require immediate or short-term repairs above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

Normal Wear and Tear - Defined as deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the Tenant, by a guest or invitee of the Tenant (Section 93.006[b]); Chapter 93 of the Texas Property Code entitled "Commercial Tenancies"

<u>Physical Deficiency (ies)</u> - The presence of a conspicuous defect or defects and/or material deferred maintenance of a subject property's material systems, components, or equipment as observed. Specifically excludes deficiencies that may be remedied with routine

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² ASTM Designation E2018-15; November 2015ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken PA 19428-2929, United States

maintenance, miscellaneous minor repairs, normal operating maintenance, etc. (ASTM E2018-15).

<u>Poor Condition</u> – Found not to be in working condition or requires immediate or shortterm repairs substantially above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

<u>Routine Maintenance</u> - Repair that does not require specialized equipment, professional services, or licensed contractors but, rather can be corrected within the budget and skill set of typical property maintenance staff (ASTM E2018-15).

IV. Baseline Property Condition Assessment: Beginning on or about the tenth (10th) anniversary but no later than the twelfth (12th) anniversary of the Term, Tenant shall procure, at the sole cost of Tenant, a Property Condition Assessment baseline report ("PCA") to be prepared, written and signed by a licensed professional engineer qualified to assess the condition of the Demised Premises and all Building Improvements, fixtures and equipment made a part thereto pursuant to the then-operative version of ASTM International Standard Designation E2018 as of the date the PCA is performed. If at that time, for any reason, ASTM International no longer publishes standards for conducting property condition assessments for commercial real estate in the United States, Landlord and Tenant shall mutually agree to adopt another similar standard of practice to be performed by qualified third parties recognized and accepted by the commercial real estate industry in the United States.

For any portion of the Demised Premises designed and constructed with the intent to be used for the storage and movement of aircraft, the PCA shall also include an aircraft pavement condition assessment performed for such areas in accordance with FAA Advisory Circular 150/5380-7A "<u>Airport Pavement Management Program</u>" and ASTM Standard Designation D5340 "<u>Standard Test Method for Airport Pavement Condition Index Surveys</u>" (or their respective operative standard in effect at the time of the PCA report date) (the "<u>Pavement Standards</u>"). If no such standard exists at the time, the pavement condition assessment shall be performed based on prevailing industry standards as of the date of the assessment.

- A. Within thirty (30) calendar days of the published date of the PCA report Tenant shall deliver to Landlord a complete signed original copy of the PCA report together with the aircraft pavement condition assessment, if any, together with:
- (1.) "Tenant's Remedy Plan", a written plan prepared by Tenant itemizing and given in sufficient detail Tenant's plan to remedy and cure, at Tenant's sole cost and expense, any and all physical deficiencies and, or Deferred Maintenance matters identified and communicated in the PCA report. Tenant's Remedy Plan shall indicate, among other things, that all work will be completed in a good and workman like condition pursuant to all local building codes and ordinances as required by the Lease within one hundred and eighty (180) calendar days from the date of the PCA's published report date (the "Remedy Period") unless otherwise agreed to in writing by Landlord.
- (a.) If the pavement condition index ("PCI"), as defined in the Pavement Standards, reflects a score less than 70 (or its equivalence) the Tenant's Remedy Plan shall set forth in

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sufficient detail Tenant's intended remedy and cost estimate necessary to increase the aircraft pavement PCI score to a minimum of 70 within the Remedy Period.

- (b.) In the event the PCA recommends supplemental testing or evaluation of any building component including, but not limited to, structural, building envelope, roofing, HVAC, plumbing, electrical, fire alarm and suppression, elevator, hangar door and/or door operators, environmental, pavement and ADA, Tenant's Remedy Plan shall reflect Tenant's plan to complete such supplemental investigations as recommended within the Remedy Period.
- (2.) "Tenant's Facility Maintenance and Repair Plan" (or "Maintenance Plan") which sets forth in sufficient detail Tenant's stated itemized objectives to maintain and keep all building components and systems, pavement and landscaped areas in good condition and repair together with any planned capital repairs, including those cited in the PCA report and any capital improvements planned within the next ten (10) years following the PCA published report date. Additionally, the Maintenance Plan should include but not be limited to the following:
- (a.) Tenant's schedule and checklist for periodic self-inspection of all major building components and systems on annualized basis.
- (b) Tenant shall periodically update the Maintenance Plan to reflect scheduled repairs made together with itemized repair costs given, new conditions found as a result of Tenant's periodic self-inspections and Tenant's plan to maintain or repair said condition.
- B. If Tenant fails to deliver to Landlord a complete signed original Baseline PCA Report, Tenant's Remedy Plan and Tenant's Facility Maintenance and Repair Plan as required herein. Landlord may provide written notice thereof to Tenant. Tenant shall have sixty (60) business days after receipt of such notice to provide such report or plan. Tenant's failure to provide the documentation required herein shall be considered an event of default of the Lease. Tenant's failure to promptly remedy any physical deficiency (ies) identified and communicated in any PCA report as required herein is also considered an event of default under the Lease. In the event of such default(s), in addition to all other rights and remedies available to Landlord under the Lease and by law, Landlord may, but not be obligated to, cause such reports and plans to be prepared and implemented as deemed commercially reasonable; and all reasonable costs therefore expended by Landlord plus interest thereon as provided for in Section 39 of the Lease shall be paid by Tenant upon demand.
- V. Requirement for Subsequent Baseline Property Condition Report Updates, Tenant Remedy Plan Updates and Tenant's Facility Maintenance and Repair Plan Updates:
- A. Upon each ten (10) year anniversary of the Term (but not later than two (2) years after each 10-year anniversary) Tenant shall procure, at its sole cost and expense, a PCA update (including aircraft pavement condition assessment) with the subsequent PCA report being of similar form and scope as the initial baseline PCA outlined above. Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) business days of the published date of the subsequent PCA report, Tenant shall deliver to Landlord a complete signed original of the subsequent

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PCA report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all physical deficiencies and/or Deferred Maintenance matters identified and communicated in the subsequent PCA report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the most recent subsequent PCA report findings and recommendations.

- B. With no less sixty (60) months remaining until the Lease Expiration , Tenant will procure, at Tenant's sole cost and expense, a final PCA report (including aircraft pavement condition assessment) with the final PCA report being of similar form and scope as the initial baseline PCA outlined above (the "Final PCA Report"). Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) business days of the published date of the Final PCA Report, Tenant shall deliver to Landlord a complete signed original of the Final PCA Report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the Final PCA Report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the Final PCA Report findings and recommendations which are to be implemented through the Lease Expiration Date.
- VI. Qualification of Property Condition Reviewer: The qualifications of a thirdparty consultant performing or overseeing the PCA shall be:
 - Licensed in the state of Texas as a professional architecture or engineer;
 - 2. Demonstrated experience working with general aviation type properties;
 - Having working knowledge of relevant FAA Advisory Circulars and ASTM Standards relating to facility and pavement maintenance and survey standards affecting the subject property type and scope (size and complexity, etc.); and
 - Experience preparing property condition reports.

VII. Record Retention: Throughout the Term Tenant shall diligently gather and retain in an orderly manner all documentation affecting and relating to the Building Improvements and any fixtures or equipment made a part of the Demised Premises. To the extent possible the Tenant shall retain digital copies of all such documentation, which can be easily reviewed, inspected and sourced. All such documents are to be made available to each consultant assigned to perform the property condition assessment and pavement condition analyses.

Such documents to be retained should include but not be limited to:

- Site plan updated as necessary.
- Property Survey updated as necessary to reflect any changes to the leased premises.

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- Construction and "as-built" drawings together with written building specifications.
- 4. Certificate of Occupancy and building permits.
- 5. Building Owner's Manual received from the General Contractor.
- Pavement Condition Assessment Reports (aircraft apron and other).
- Insurance casualty claims and adjustment reports affecting the Building Improvements.
- 8. Description of future/planned material improvement or repairs.
- Outstanding notices and citations for building, fire, and zoning code and ADA violations.
- Previously prepared, if any, Property Condition Assessment reports or engineering testing and surveys pertaining to any aspect of the subject property's physical condition.
- Lease listing literature, listing for sale, marketing/promotional literature such as photographs, descriptive information, reduced floor plans, etc.
- 12. Periodic inspection reports (self or third-party) and supporting documentation.
- 13. Irrigation plans updated as needed.
- 14. Operating manuals, instructions, parts lists.

VIII. Reversionary Process (at Lease Expiration or Early Termination): Pursuant to the terms and conditions of the Lease, unless otherwise amended or modified the Lease is due to expire on the Lease Expiration Date at which time any and all Building Improvements and any subsequent improvements and alterations made thereto as defined in the Lease revert and become under the ownership of the Landlord. If Tenant is not then in default of the Lease, Tenant shall have the right to remove all personal property and trade fixtures owned by the Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal, which work shall be conducted in a good and workmanlike manner and at Tenant's sole cost and expense.

Accordingly, in order to facilitate an orderly transfer of all the ownership interests of the Demised Premises, Tenant shall deliver or cause to be delivered to Landlord all of the following on or before the Expiration Date, or earlier termination of the Lease:

Tenant's Representations: Tenant shall certify and attest in writing, in a form acceptable to Landlord:

- Tenant conveys to Landlord in good and indefeasible title all the Building Improvements free and clear of any and all liens, assessments, easements, security interests and other encumbrances; and
- There are no lessees or sub-lessees in possession of any portion of the Building Improvements, tenants at sufferance or trespassers; and

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- 3. There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Building Improvements, and all obligations of Tenant arising from the ownership and operation of the Demised Premises and any business operated on the Building Improvements including but not limited to taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid before the Expiration Date; and
- There is no pending or threatened litigation, condemnation, or assessment affecting the Building Improvements; and
- 5. Tenant has disclosed to Landlord any and all known conditions of a material nature with respect to the Building Improvements which may affect the health or safety of any occupant of the Demised Premises. Except as disclosed in writing by Landlord or Tenant, the Building Improvements have no known latent structural defects or construction defects of a material nature, and none of the improvements has been constructed with materials known to be a potential health hazard to occupants of the Building Improvements; and
- 6. Except as otherwise disclosed in writing by Tenant to Landlord, the Building Improvements do not contain any Hazardous Materials other than lawful quantities properly stored in containers in compliance with applicable laws. For the purpose herein, "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, or any other federal, state or local environmental law, ordinance, rule, or regulation, whether existing or subsequently enacted during the Term; and
- 7. Any Rent and monies due under the Lease unless paid in full; and
- A Bill of Sale conveying personal property remaining or left on the Demised Premises, if any, free and clear of liens, security interest and encumbrances; and
- All plans, drawings and specifications respecting the Building Improvements, including as-built plans and specifications, landscape plans, building system plans (HVAC, Telecom/Data, Security System, plumbing) air-conditioning in Tenant's possession or control; and
- 10. Inventory with corresponding descriptions and identification of all keys, lock combinations, access codes and other such devices or means to access every securable portion, compartment, cabinet, panel, closet, gate or point of entry within the Demised Premises; and
- 11. All soil reports, engineering and architectural studies, grading plans, topographical maps, feasibility studies and similar information in Tenant's possession or control relating to the Demised Premises; and.
- 12. A list and complete copies of all current service contracts, maintenance contracts, management contracts, warranties, licenses, permits, operating agreements, reciprocal easement agreements, maps, if any, applicable to the Demised Premises, certificate of occupancy, building inspection approvals and covenants, and conditions and restrictions respecting the Demised Premises; and

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- 13. Copies of all utility bills (electric, water/sewer and gas) and similar records respecting the Building Improvements for the past three (3) months; and
- 14. A schedule of all service contracts, agreements and other documents not expressly referenced herein relating to the Demised Premises.

~End~

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LEASE ADDENDUM #2

DEMOLITION OF EXISTING IMPROVEMENTS

Note: Capitalized terms used herein are the same as defined in the Lease or any Addendum other attached and made a part of the Lease unless otherwise expressly provided for. This <u>Lease Addendum #2</u> is made a part of and hereby incorporated into the Lease by reference.

- As of the Effective Date of this Lease there are certain building improvements already
 existing upon the Demised Premises in there as-is, where-is condition subject to the
 Remediation Plan (defined below), including but not limited to a two-story steel
 framed atrium office building of approximately 11,000 square feet, approximately
 80,000 square feet of concrete aircraft apron, 100+/- off-road passenger vehicle
 concrete parking spaces with driveway, and treed landscaping hereinafter referred to
 the "Existing Building Improvements".
- 2. Within five (5) days of the Effective Date, Tenant shall provide Landlord with a proposed Remediation Plan (inclusive of a hazardous materials survey and an estimate of the cost to remediate) herein after "Remediation Plan". Upon approval by Landlord of the Remediation Plan, Tenant shall arrange for the work contemplated by the Remediation Plan to be accomplished. The Remediation Plan shall be completed under the terms set forth herein. Landlord hereby agrees to reimburse Tenant for all costs associated with the work performed pursuant to the Landlord approved Remediation Plan. Such costs shall include, but are not limited to, costs of the contractors, consultants, insurance, analytical and laboratory fees, and any other additional costs as may be incurred by Tenant in carrying out the Remediation Plan. Additionally, Landlord agrees to hold harmless the Tenant for any claims arising out of the Tenant's remediation of the Demised Premises pursuant to the Remediation Plan, unless such claims are alleged or found to have been caused by, in whole or in part, the negligence or willful misconduct of Tenant or its subtenants, officers, employees, contractors, subcontractors or invitees.
- 3. Landlord shall deliver and Tenant shall accept the Demised Premises vacant, free and clear of Hazardous Materials subject to the Remediation Plan, any lease, sublease, or any other encumbrance, in a generally clean and uncluttered condition with all public utilities and services terminated and disconnected (unless otherwise requested by Tenant), air conditioning systems vacated of coolant gases or liquids where the Existing Building Improvements are rendered to a condition commercially ready and acceptable for demolition ("Landlord's Delivery of the Demised Premises"). Upon Landlord's Delivery of the Demised Premises to Tenant, Tenant shall not be entitled to occupy the Existing Building Improvements and no certificate of occupancy shall be granted by the Town of Addison for the same.
- Upon Tenant's taking actual physical possession of the Demised Premises pursuant to #3 above, Tenant shall then, at Tenant's sole cost and expense, demolish or cause

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to be demolished all the Existing Building Improvements required by the Design Plan (as defined in Lease Addendum #3) in accordance with a Demolition Plan (as defined hereunder), which shall be (i) prepared by a licensed engineer; (ii) approved in advance and in writing by the Landlord; and (iii) determined by the Town of Addison's building official to be complete and approved for use for the issuance of all Town of Addison permits necessary for the demolition and removal of the Existing Building Improvements (the "Demolition Plan"). Except for instances of delays covered by Force Majeure in conformance with Section 42 of the Lease or those delays caused by Landlord, Tenant's failure to cause substantial completion of the approved Demolition Plan within six (6) full calendar months following Landlord's Delivery of the Demised Premises shall be a Default of Tenant pursuant to Section 23 of the Lease. For the purposes of this Lease Addendum #2, 'substantial completion' shall mean that: (i) substantial completion of the Demolition Plan has occurred; and (ii) the Town of Addison has conducted and completed a final inspection of the completed demolition work.

5. Construction Insurance, Payment and Performance Bond:

- a. During any period of demolition, Tenant or Tenant's General Contractor shall obtain at Tenant's or Tenant's General Contractor's sole cost and expense and keep in full force and effect:
 - (i) Commercial General Liability insurance in conformance with Section 13 of the Lease; and
 - (ii) Statutory limits of worker's compensation insurance in conformance with Section 13 of the Lease; and
- 6. Tenant shall provide the following bonds to Landlord before construction or installation of any Tenant Improvement begins:
 - a. Tenant shall cause its contractors to provide a payment bond in an amount equal to the construction costs of the Tenant Improvements ("<u>Payment Bond</u>") to ensure that materials and labor are paid for. Upon completion of the work, Tenant shall record a release of the Payment Bond and provide Landlord with a copy.
 - b. Tenant shall cause its contractors to provide a performance bond in an amount equal to the total cost of the Tenant Improvements ("<u>Performance Bond</u>") to ensure that the work is completed according to the Construction Documents approved by Landlord. Upon completion of the work, Tenant shall record a release of the Performance Bond and provide Landlord with a copy.
 - c. Tenant shall provide copies of the Payment Bond and Performance Bond to Landlord prior to the start of any work. Each Bond shall name Tenant and Landlord as "obliges".

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d. The surety company providing the Payment Bond and the Performance Bond shall have an A.M. Best rating of B+ VI or better for the past four (4) calendar quarters.

All contracts for the construction or installation of the Tenant Improvements shall include provisions of insurance and suretyship satisfactory to Landlord for the protection of Landlord; Tenant's laborers, suppliers and subcontractors; and the public.

- 7. Should Tenant be in default of the Lease after any applicable cure period pursuant to <u>Section 23</u> of the Lease prior to substantial completion of the Demolition Plan, Landlord shall, in addition to and without waiving any other remedies available to Landlord under <u>Section 24</u> of the Lease, be entitled to the following:
 - a. If Tenant has commenced work on the approved Demolition Plan but has not achieved substantial completion at the time Landlord delivers its written notice of such default under <u>Section 23</u> of the Lease, Landlord shall have the right to re-enter the Demised Premises to complete or cause the completion of the demolition work in accordance with the approved Demolition Plan, which said costs of completion by Landlord shall be at Tenant's sole costs and expense. Tenant shall promptly reimburse Landlord within thirty (30) days of Tenant's receipt of Landlord's final invoice for said demolition work. Provided Tenant timely reimburses Landlord for the remainder of the demolition work, the Lease shall be declared null and void with no further obligation of one party to the other except where the Survivability of Rights and Remedies are provided for in Section 53 of the Lease.
 - b. Tenant's failure to timely reimburse Landlord under Paragraph 7(a) above shall be a default under the Lease and shall be eligible, without exception, for recovery by Landlord under the Payment and Performance Bonds required of Tenant under Paragraph 5 above.
 - c. In the event Tenant is required to surrender possession of the Demised Premises under this Paragraph 7, Tenant shall deliver the Demised Premises to Landlord in a commercially reasonable and safe condition. Notwithstanding the foregoing, in the event Tenant does not deliver the Demised Premises in a commercially reasonable or safe condition, Landlord shall provide Tenant written notice allowing Tenant fourteen (14) days to restore the Demised Premises to a commercially reasonable safe and clean condition. If Tenant fails to restore the premises to a commercially reasonable and safe condition, Landlord may without waiving any other of its rights and remedies available to it under the Lease and restore the Demised Premises to a commercially reasonable safe and clean condition at Tenant's sole cost and expense. Tenant shall promptly reimburse Landlord within thirty (30) days of Tenant's receipt of Landlord's final invoice for said demolition work. Provided Tenant vacates the Demised Premises as required herein and timely reimburses Landlord for the demolition work, this Lease shall be declared null

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and void with no further obligation of one party to the other except where the Survivability of Rights and Remedies are provided for in <u>Section 53</u> of the Lease.

8. The parties hereby agree and acknowledge time is of the essence with respect to the obligations of the parties under this Lease Amendment #2. Landlord and Tenant agree to collectively cooperate and coordinate with one another as necessary in order to facilitate the remediation and demolition work contemplated herein. The parties acknowledge that, due to the nature of the work contemplated in this Lease Addendum #2, unknown circumstances may arise that result in a material effect upon the timelines set forth herein that may not constitute an Event of Force Majeure under Section 43 of the Lease. In the event of such a circumstances and provided each party is diligently pursuing their respective duties and obligations herein, the parties may, upon mutual written agreement, amend or modify the timeline(s) to better suit the overall objective and outcome of the affected work.

~ End ~

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LEASE ADDENDUM #3

CONSTRUCTION OF NEW BUILDING IMPROVEMENTS

Note: Capitalized terms used herein are the same as defined in the Lease or any other Addendum attached and made a part of the Lease unless otherwise expressly provided for. This <u>Lease Addendum #3</u> is made a part of and hereby incorporated into the Lease by reference.

A. New Building Improvements.

- 1. As a condition for Landlord to lease the Demised Premises to Tenant pursuant subject to the terms and conditions of the Lease, Tenant shall construct or cause to be constructed on the Demised Premises, at Tenant's sole cost, expense and risk, certain buildings and other improvements more fully described in Exhibit 4 of the Lease, which is incorporated herein by reference (the "New Building Improvements").
 - a. The New Building Improvements are to be constructed in accordance with plans and specifications prepared by a state licensed architect and/or engineer retained by Tenant (the "Design Plan"), which said Design Plan shall be submitted to Landlord for approval evidenced by the issuance of a building permit necessary to construct the New Building Improvements. Landlord agrees its review of the Design Plan shall not be unreasonably withheld, conditioned or delayed.
 - b. The construction cost or value (separate and apart from the cost of design) of the New Building Improvements shall exceed Ten Million Dollars (\$10,000,000) (the "Construction Value"), and Tenant shall submit to Landlord upon request all commercially reasonable evidence of such Construction Value in a form acceptable to Landlord (the "Construction Value Evidence"). For the purposes herein reasonable evidence of Construction Value would substantially be in the form of the American Institute of Architects (AIA) G702 Application for Payment certified by the owner, architect or engineer and, general contractor to be true and correct to their best knowledge.
 - c. If Tenant fails to submit the Design Plan to the Landlord and a completed application for the valid building permit to construct the New Building Improvements within six (6) full calendar months following the Effective Date of the Lease shall constitute a default of the Lease, Landlord may, among its other remedies and at its sole discretion, terminate the Lease by giving written notice to Tenant pursuant to the Pre-Construction Termination provision in subsection "f" below.
 - d. Construction of the New Building Improvements shall commence on or before the earlier of (i) the last day of the third full calendar month following the date the building permit for construction of the New Building Improvements is issued by Landlord, or

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- (ii) eighteen (18) months following the Effective Date of the Lease ("Construction Commencement Deadline").
- e. Construction of the New Building Improvements shall be deemed to have commenced after each of the following events have occurred ("Commencement of Construction"):
 - (i) Approval of the Design Plan by Landlord which shall not be unreasonably conditioned, delayed or withheld;
 - (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the New Building Improvements on the Demised Premises;
 - (iii) Tenant shall have received (and shall have provided a true and correct copy to the Landlord) the FAA's determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration;
 - (iv) Execution of a contract with a qualified general contractor, including proof of the required Builder's Risk Insurance Policy and the Payment and Performance Bonds required under Section 13 of the Lease, and
 - (v) The initiation of actual mobilization of construction equipment on the Demised Premises; and
 - (vi) Tenant has delivered to Landlord written notice confirming that each of the foregoing items has occurred in a form reasonably satisfactory to Landlord.
- f. If Tenant fails to cause Commencement of Construction by the Construction Commencement Deadline, then Landlord may, at its sole discretion, terminate the Lease by giving written notice to Tenant and the Lease shall become null and void with no further obligation of one party to the other ("<u>Pre-Construction Termination</u>") except where the Survivability of Rights and Remedies are provided for in <u>Section 53</u> of the Lease, except:
 - (i) Prior to vacating the Demised Premises, Tenant shall, at Tenant's sole cost and expense, leave the Demised Premises in a commercially reasonable safe and clean condition, including without limitation, the removal of all construction tools, equipment, vehicles and construction trailers. The Demised Premises is to be cleared of all construction debris and left in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should Tenant fail to leave the Demised Premises in such condition. Landlord shall provide Tenant with fourteen (14) days' notice that the condition is not commercially reasonable safe and clean and provide Tenant with the opportunity to return the Demised Premises to the condition described in this subsection. Thereafter, Landlord has the right to restore or cause to restore the Demised Premises to a commercially reasonable clean and safe condition as called for herein, the costs of which shall be at Tenant's sole cost and expense. Tenant shall promptly reimburse Landlord within thirty (30) days of Tenant's receipt of Landlord's final invoice for said work. Provided Tenant vacates the Demised Premises as required herein and timely reimburses Landlord as set forth in this subsection, the Lease shall be declared null and void

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with no further obligation of one party to the other except where the Survivability of Rights and Remedies are provided for in Section 53 of the Lease.

- Any architect or engineer engaged by Tenant shall be duly licensed to practice architecture or engineering in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including incidental, special damages and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage, destruction or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction or violation of the Lease with respect thereto, and TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS DESCRIBED IN THE PRECEDING SENTENCE (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE "DAMAGES") ARISING OUT OF TENANT'S USE OF THE DEMISED PREMISES. THIS INDEMNIFICATION SHALL SURVIVE THE TERMINATION OF THE LEASE. It is expressly understood and agreed that Tenant's construction of the New Building Improvements shall include the finishout in accordance with the plans and specifications for the finish-out of the New Building Improvements as submitted by Tenant to Landlord in the approved Design Plan.
- 3. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.
- 4. Following Commencement of Construction Tenant shall complete construction of the New Building Improvements with reasonable diligence, in conformance with the Design Plan. Any material deviation from the Design Plan shall be subject to the prior review and written approval of Landlord. Tenant shall achieve Substantial Completion (as defined in subsection 9. below) on or before the expiration of twenty-four (24) full calendar months following Commencement of Construction ("Substantial Completion Deadline"). Furthermore, Tenant shall achieve Final Completion (as defined in subsection J. below) within three (3) full calendar months following the Substantial Completion Deadline.
 - a. If Tenant fails to achieve Substantial Completion on or before the Substantial Completion Deadline, Tenant shall then pay Landlord upon written demand Four Hundred Dollars (\$400.00) as additional rent for each calendar day thereafter until Tenant achieves Substantial Completion, which the parties agree represents a reasonable estimation of the actual costs that would be incurred by Landlord in the event of such delay.

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- b. If Substantial Completion has not occurred within thirty-six (36) calendar months after the Commencement of Construction, subject to events of Force Majeure, such failure shall constitute an event of default of the Lease pursuant to <u>Section 23</u>. In such event, Landlord shall have the right to exercise any and all remedies available to it pursuant to <u>Section 24</u> of the Lease, including without limitation the right to (i) recover accrued unpaid rent and damages, and (ii) achieve Substantial Completion at Tenant's sole cost and expense. Should Landlord elect to terminate the Lease hereunder, <u>Section 53</u> of the Lease shall survive any such early termination of the Lease.
- c. If Final Completion has not occurred as required herein, Tenant shall pay Landlord One Hundred Dollars (\$100.00) as additional rent for each calendar day thereafter until Tenant achieves actual Final Completion, which the parties agree represents a reasonable estimation of the actual costs that would be incurred by Landlord in the event of such delay.
- d. If upon Final Completion, the Construction Value fails to equal or exceed Ten Million Dollars (\$10,000,000.00), for each and every One-hundred and Twenty-Five Thousand Dollars \$125,000.00 shortfall in total Construction Value, the Term shall be reduced by twelve months (for example, if the total Construction Value totals \$9,655,000 or \$345,000 less than the contractual amount, the term shall be reduced by 33 calendar months [\$345,000/\$125,000 = 2.76 x 12 months = 33.12 months rounded to the nearest whole calendar month] for a total adjusted Term of 447 calendar months or 37.25 years.). In such event, the parties shall execute a short form Memorandum of Ground Lease substantially in the form of Exhibit 6 to be recorded in the Dallas County Official Public Records affirming the true and correct Term as hereby adjusted.
- e. Tenant's failure to promptly reimburse Landlord for any cost or expense in conformance with this <u>Lease Addendum #3</u> shall be an event of a default under the Lease and such cost or expense shall be immediately eligible, without exception, for recovery by Landlord under the Payment and Performance Bonds required of Tenant under Section B of this Lease Addendum #3.
- 5. Tenant agrees that any construction or modification of the Building Improvements or any other improvements which may be authorized in writing by Landlord on or within the Demised Premises shall be performed in strict compliance with all Laws. Tenant recognizes that construction/maintenance standards and specifications, the Town of Addison's building and related codes and zoning requirements, and all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.

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- 6. With respect to Title III of the Americans With Disabilities Act of 1990, Tenant acknowledges and agrees it shall remain fully responsible and obligated over the Term to construct, alter and maintain the Building Improvements in accordance with the prevailing ADA Act. Furthermore, Tenant shall ensure no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, retaliation or genetic information, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the ADA Act. Tenant shall give Landlord written notice within ten (10) days of Tenant having knowledge or written notice of any ADA Act violation or claim of violation from any governmental entity with authority on such matters or from any third party.
- 7. Tenant will properly and timely submit to the FAA, the TxDOT, and any other governmental authority, entity or agency having jurisdiction regarding the Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over the Airport.
- 8. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises and all parts thereof, during normal business hours, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises. Landlord shall coordinate access with Tenant's designated personnel prior to a site visit. Tenant reserves the right to deny access to Landlord if OSHA safety requirements aren't followed.
- 9. "Substantial Completion of the Building Improvements" or "Substantial Completion" shall be deemed to have occurred upon the issuance by Landlord of a final certificate of occupancy for all portions of the Building Improvements for which a certificate of occupancy is required. "Final Completion" of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.

B. Construction Insurance, Payment and Performance Bond:

 During any period of construction, Tenant or Tenant's General Contractor shall obtain at Tenant's or Tenant's General Contractor's sole cost and expense and keep in full force and effect:

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- a. a Commercial General Liability insurance in conformance with <u>Section 13</u> of the Lease; and
- b. Statutory limits of worker's compensation insurance in conformance with <u>Section</u>
 13 of the Lease;
- c. a Builder's Risk Completed Value policy with an all-risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$10,000 or deductibles imposed by carrier due to state market conditions; and
- d. Tenant shall provide the following bonds to Landlord before construction or installation of any Tenant Improvement begins:
 - i. Tenant shall cause its contractors to provide a payment bond in an amount equal to the construction costs of the Tenant Improvements ("<u>Payment Bond</u>") to ensure that materials and labor are paid for. Upon completion of the work, Tenant shall record a release of the Payment Bond and provide Landlord with a copy.
 - ii. Tenant shall cause its contractors to provide a performance bond in an amount equal to the total cost of the Tenant Improvements ("<u>Performance Bond</u>") to ensure that the work is completed according to the Construction Documents approved by Landlord. Upon completion of the work, Tenant shall record a release of the Performance Bond and provide Landlord with a copy.
 - iii. Tenant shall provide copies of the Payment Bond and Performance Bond to Landlord prior to the start of any work. Each Bond shall name Tenant and Landlord as "obliges".
 - iv. The surety company providing the Payment Bond and the Performance Bond shall have an A.M. Best rating of B+ VI or better for the past four (4) calendar quarters.

All contracts for the construction or installation of the Tenant Improvements shall include provisions of insurance and suretyship satisfactory to Landlord for the protection of Landlord; Tenant's laborers, suppliers and subcontractors; and the public.

~ End ~

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LEASE ADDENDUM # 4

ADDITIONAL MORTAGEE PROTECTIONS REQUIRED BY PUBLIC ACTIVITY BOND FINANCING PROGRAM

- If this Lease is terminated for Tenant's breach before the end of the Term, for 1. any reason other than a default that has not been cured by Tenant or Leasehold Mortgagee within the period specified in Section 9(C)(3), including, without limitation, as a result of a rejection or disaffirmation of the Lease in a bankruptcy, insolvency or other proceeding affecting creditor's rights then Landlord shall provide a copy of the termination notice to the Leasehold Mortgagee. Upon the written request of Leasehold Mortgagee made any time within thirty (30) days after the receipt of such notice from Landlord, Landlord shall agree to enter into a new lease of the Demised Premises with Leasehold Mortgagee for the remainder of the Term of the Lease upon the same covenants, conditions, limitations and agreements contain in the Lease, except for such provisions which must be modified to reflect any such termination, rejection or disaffirmance and the passage of time, provided, that, in the event of any such termination, rejection or disaffirmance, Leasehold Mortgagee (or such successor or assign) (A) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid amounts due under the Lease up to and including the date of the commencement of the term of such new lease and all reasonable and substantiated expenses incurred by Landlord to prepare such new lease, and (B) otherwise shall cure all other defaults under the Lease promptly and with due diligence after the delivery of such new lease. If Landlord does not enter into a new lease with the Leasehold Mortgagee, then the Leasehold Mortgagee shall immediately remove all trade fixtures and other personal property from the Premises and repair to Landlord's reasonable satisfaction, any damage caused to the Demised Premises by the removal. The Leasehold Mortgagee shall not remove or tamper with any Building Improvement on the Demised Premises.
- Tenant shall be permitted to finance the design, construction and operation of the Building Improvements through a Private Activity Bond ("PAB") provided such PAB is consistent with the terms and conditions of this Lease. Landlord shall provide customary consents and all related approvals required in connection with a PAB issuance and Mortgage as part of the PAB financing program, which will be provided at Tenant's sole cost and expense. Any lien created to secure such financing or any other debt undertaken by Tenant shall be secured by Tenant's leasehold interest in the Lease and the Building Improvements and shall not be secured by the fee interest in the Demised Premises. IT IS UNDERSTOOD AND AGREED THAT TENANT'S FINANCING OF THE BUILDING IMPROVEMENTS THROUGH PAB IS SOLELY THE DEBT OF TENANT AND SHALL NOT RESULT IN ANY FINANCIAL BURDEN OR OBLIGATION OF THE LANDLORD IN ANY MANNER, INCLUDING ANY COST OR EXPENSE ASSOCIATED WITH THE TEFRA HEARING OR ANY OTHER CONSENT OR APPROVAL REQUIRED TO BE PROVIDED BY LANDLORD. Lienholders through PAB financing described herein shall be included within the definition of Leasehold Mortgagee as that term is used throughout the Lease.

~ End ~

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Site of Proposed Sky Harbour / Addison Hangars, LLC Ground Lease





Parcel # ALP#	Street Address	Land Area (Acres)	Current Use
#0680 #A11	4505 Claire Chennault St.	263,712 sq. ft. (6.054 acres)	Vacant, two-story terminal building, aircraft apron and off-street parking.

Addison Hangars, LLC Summary of Salient Ground Lease Terms

- 1. **Tenant**: Addison Hangars, LLC, a Delaware limited liability company.
- 2. **Leased/Demised Premises**: Airport land consisting of approximately 6.054+/- acres (263,712 gross square feet) located at 4505 Claire Chennault Drive at the Airport.
- 3. **Lease Term**: Term Commences when a Certificate of Occupancy is issued for any portion of the New Building Improvements and continues for 40-years (480 months).
- 4. **Rent**: If Commencement Date occurs during the calendar year 2023, the rate shall be the product of \$.72 times the gross square feet of the leased premises or, \$189.872 annually / \$15,822 monthly.
 - A. If during calendar year 2024, the rate is \$.7344 per SFL
 - B. If during calendar year 2025, the rate is \$.7491 per SFL
 - C. If any time after calendar year 2025, the Base Rent shall be determined by a third-party licensed appraiser.
- 5. **Adjustment of Rent** Biennial adjustment beginning with second anniversary of the Commencement Date over the Term based upon the percentage of change in the local Consumer Price Index (CPI) published by the U.S. Dept. of Labor.
- 6. **Permitted and Restricted Use of Premises**: The Leased Premises shall be used and occupied by Tenant or its subtenants only for the following purpose:
 - A. Constructing, owning, operating an executive aircraft hangar campus with office, parking, passenger lounge, administrative and shop space which may be sublet to aircraft owners and operators; and
 - i. Hangar Doors minimum 28' high
 - ii. Aircraft Design Group (ADG) III (100,000 lbs. dual wheel aircraft)
 - iii. Taxiway Design Group 2 connections
 - B. Standard airport restrictions provisions apply, without exception.
 - i. No third-party maintenance, flight schools, retail services
 - ii. No non-aeronautical uses
 - iii. No discrimination
 - iv. Services provided are to be fair and equitable

7. Building Improvements and Construction of New Improvements:

- A. Existing Building Improvements <u>Lease Addendum #2</u>
 - i. Tenant to remediate Hazardous Materials on behalf of City, City to reimburse Tenant for actual expense. Estimated cost is \$37,500.
 - ii. Remediation Plan and costs subject to City prior approval
 - iii. City responsible for disconnecting utilities and evacuating HVAC of gases.
- B. Tenant responsible for demolition of building at its sole costs, expense and risk.
- C. New Building Improvements Lease Addendum #3

- i. Minimum Construction Value (separate from design costs) \$10M.
- ii. Design Plan to be delivered w/in 6 mos. of Effective Date
- iii. Construction to commence w/in 18 months of Effective Date
- iv. Substantial Completion is to be w/in 24 months of Construction Start Date
 - a. Delay Penalty is \$400/day
- v. Tenant to provide Performance and Payment Bond, with Town as beneficiary, during period of construction.
- D. Future Building Improvements must have LL's prior written consent, to be performed similar to New Building Improvements provisions.
- 8. Assignment, Subletting & Leasehold Mortgage of Leasehold.
 - A. Assignment: Tenant has right to assign to an entity it may merge or consolidate with or, which is a parent or subsidiary of Tenant.
 - B. Subletting: Right to sublet subject to terms of Master Landlord Sublease Consent Rider (Exhibit 7)
 - C. Mortgaging of Leasehold: generally consistent with city lease standards subject to <u>Lease</u> <u>Addendum #4</u> (see 11 below).
- 9. **Maintenance and Repair of Demised Premises:** Lease standard provisions including Lease Addendum #1 Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices.
- 10. **Title to all Building Improvements:** Tenant shall own all existing and future building improvements made to the premises for the duration of Term, ownership reverts to the Town at end of Term;
- 11. All other terms and conditions are consistent with Town's current lease standards.
- 12. <u>Lease Addendum #4:</u> The Tenant intends to finance the design, construction and operation of the building improvements constructed on the lease premises using loan proceeds originating from Public Activity Bonds (also referred to as private activity bonds, "PABs") issued through the Public Finance Authority.
 - A. In August 2021, Sky Harbour Group secured \$166.34 million in financing through the sale of Series 2021 private activity tax -exempt senior bonds through municipal conduit issuer, Private Finance Authority ("PFA")
 - B. Addison Hangars, LLC will be included among a group of other subsidiaries of Sky Harbour ("Obligated Group"), which the leasehold improvements and revenue from the properties will be used to repay and secure the bonds.
 - C. Public/Private Activity Bonds **do not** constitute a:
 - i. Debt, loan of credit or, a pledge of the full faith and credit or taxing power of PFA, the Town or, the State of Texas; or
 - ii. Monetary liability of PFA, the Town or, State of Texas; or
 - iii. Contingent liability or obligation, charge directly or indirectly against the general credit of PFA, the Town or, the State of Texas

- D. The bond issuer has the same rights and remedies as any other leasehold mortgagee at the Airport (e.g., right to cure tenant lease default, take possession of the leasehold in event of loan default).
- E. As the host jurisdiction, the City is required to hold a public hearing and approve the issuance of the PABs to finance or refinance the project in satisfaction of Section 147(f) of the Internal Revenue Code and Section 66.0304(11)(a) of the Wisconsin Statutes, where PFA is authorized to issue the bonds.

Council Meeting 11.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Innovative in Entrepreneurship & Business

Milestones: Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Hold a Public Hearing, Present, Discuss, and Consider Action on a Resolution

Approving the Financing and Refinancing of a Project for the Development
of Airport Facilities at the Addison Airport Solely for Purpose of Section
147(f) of the Internal Revenue Code of 1986, as Amended and Section
66.0304(11)(A) of the Wisconsin Statutes, as Amended.

BACKGROUND:

The Town of Addison, owner of Addison Airport, is considering a long-term ground lease arrangement at with Addison Hangars, LLC ("Addison Hangars"), a wholly owned subsidiary of Sky Harbour Capital ("Sky Harbour"). Addison Hangars intends to finance the design, construction and operation of their aeronautical facility (the "Project" as described below) with loan proceeds originating from private activity bonds (PABs") issued by the Public Finance Authority ("PFA"). The PFA was created by local governments, for local governments, for the purpose of issuing tax-exempt conduit bonds nationwide for development projects regarded as "qualified private activities" which present no risk to the taxpayer or any state or local government. Qualified projects that may be financed by public activity bonds include airport development and redevelopment.

Addison Hangar is requesting the Town of Addison as the host jurisdiction, acting through its City Council, hold a public hearing to approve the issuance of the PABs to finance and refinance the Project, solely in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code if 1986, as amended (the "Code") and Section 66.0304(11)(a) of the Wisconsin Statutes, as amended (the "PFA Act").

In August 2021, Sky Harbour secured \$166.34 million in financing through the sale of Series 2021 PABs tax-exempt senior bonds through the Public Finance Authority to finance the acquisition and development of a portfolio of aircraft hangar projects nationwide. As part of the financing plan, Sky Harbour has obligated \$68 million in equity towards the program.

Sky Harbour and its subsidiaries including Addison Hangars, LLC; Sky Harbour Sugar Land Airport (Houston); LLC, Sky Harbour Opa Locka Airport (Miami), LLC; Nashville Hangars, LLC, APA Hangars, LLC (Denver Centennial); and DVT Hangar, LLC (Phoenix Deer Valley) are qualifying projects under the financing plan and constitute an "obligated group", whereby on a joint and several basis their leasehold interests and building improvements secure the bonds while their operating revenues repay the bonds.

Public/Private Activity Bonds do not constitute a:

- Debt, loan of credit or, a pledge of the full faith and credit or taxing power of PFA, the Town or, the State of Texas; or
- Monetary liability of PFA, the Town or, State of Texas; or
- Contingent liability or obligation, charge directly or indirectly against the general credit of PFA, the Town or, the State of Texas

In keeping with Section 147(f) of the Internal Revenue Code of 1986, as amended, and the other regulations:

Description of Project: The design, construction and operation of an executive aeronautical hangar development consisting of five (5) 14,200 square foot private jet hangars, and one (1) 30,000 square foot semi-private jet hangar on a 6.5-acre site at Addison Airport, Town of Addison, TX.

Project Location: Where commonly known as 4505 Claire Chennault Drive at Addison Airport, Addison, Dallas County, Texas.

Maximum Amount of Bonds to be Issued with Respect to the Project: \$20,300,000.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - Public Hearing Private Activity Bonds Resolution - Private Activity Bonds

Proposed Project Financing

Public Hearing Private Activity Bonds



Proposal:



- Town is considering a proposed long-term ground lease with Sky Habour Corporation d.b.a. Addison Hangars, LLC as "Tenant".
 - A 40-year Ground Lease.
 - Tenant proposes to redevelops 6.5 acres of airport land as an executive/corporate jet hangar campus.
 - Sky Harbour proposes to finance the project using proceeds from "private activity bonds."
 - In August 2021, Sky Harbour (parent of Tenant) secured \$166.34 million in financing through the sale of Series 2021 PABs tax-exempt senior bonds ("private activity bonds") through municipal conduit issuer, Public Finance Authority.
 - Sky Harbour contributed \$68 million as equity



Proposed Development Financing



- The Public Finance Authority ("PFA") was created by local governments, for local governments, for the purpose of issuing tax-exempt conduit bonds for private development benefiting the public.
- The bonds will be secured by the leasehold interests and building improvements of all the "qualifying projects" financed through the program by Sky Harbour, including Addison Hangars, LLC.
- The bonds will be repaid from the operating revenues from all the qualifying projects.
- These Private Activity Bonds <u>do not</u> constitute a:
 - Debt, loan of credit, or a pledge of the full faith and credit or taxing power of the Town; or
 - Monetary liability of the Town; or
 - o Contingent liability or obligation, charge directly or indirectly against the general credit of the Town.

The bond issuer generally has the same rights and remedies as any other leasehold mortgagee at the Airport (e.g., right to cure tenant lease default, take possession of the leasehold in event of loan default).

About Sky Harbour Corporation (NYSE-SKYH)



- A New York-based aviation development company building "Home-Basing Solutions" for corporate and private executive flight departments.
- Became publicly held company earlier this year via a special purpose acquisition with Yellowstone Acquisition, valuing the company at \$777 million.
- Builds high-end private hangar campuses with a full suite of dedicated services for based aircraft.
- Has projects in Houston/Sugar Land, Nashville, Miami, Denver, Phoenix.
- Sky Harbour's management team consists of seasoned professionals who combine aviation experience with a strong real estate development pedigree.

Proposed Development Financing (cont.)



Town's Obligation:

As the host jurisdiction, the Town is required to hold a public hearing and approve the issuance of the bonds to finance or refinance the project in satisfaction of Section 147(f) of the Internal Revenue Code and Section 66.0304(11)(a) of the Wisconsin Statutes, where the Public Finance Authority is authorized to issue the bonds.

- Notice of Public Hearing to be advertised.
- Public hearing and council approval of resolution to occur prior to approval of Ground Lease.

Conclusion & Recommendation



Council's Strategic Pillars

Innovation in Entrepreneurship & Business

Milestone #3: Leverage the use of the Airport to maximize business growth and expansion.

Town's objectives for the Airport

- Enhances overall value of the Airport with new development
- Increases revenue
- Enhances tax base
- Consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

Recommendation: Administration recommends approval.



QUESTIONS?

RESOLUTION NO. R22-XX

A RESOLUTION OF THE CITY COUNCIL FOR THE TOWN OF ADDISION, TEXAS, APPROVING THE FINANCING AND REFINANCING OF A PROJECT FOR THE DEVELOPMENT OF AIRPORT FACILITIES AT THE ADDISON AIRPORT SOLELY FOR PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED AND SECTION 66.0304(11)(A) OF THE WISCONSIN STATUTES, AS AMENDED.

WHEREAS, Addison Hangars LLC, or another affiliate of Sky Harbour Capital LLC (the "Borrower") has requested the Public Finance Authority (the "Issuer") issue its revenue bonds in one or more series from time to time (the "PFA Bonds") and loan the proceeds thereof to the Borrower for the purpose of financing and refinancing the Project (as defined in the attached Exhibit A); and

WHEREAS, a notice of public hearing was posted not less than seven days prior to the date hereof, a copy of which notice is attached hereto as <u>Exhibit A</u>; and

WHEREAS, on June 28, 2022, a public hearing was held at a meeting starting at 7:30 p.m. at Addison Treehouse, 14681 Midway Road, Suite 200, Addison, Texas 75001 with respect to the issuance of the PFA Bonds;

WHEREAS, the Borrower has requested that the Town of Addison, Texas, acting through its City Council (the "Council"), approve as the host jurisdiction of the Project, the issuance of the PFA Bonds to finance and refinance the Project, solely in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 66.0304(11)(a) of the Wisconsin Statutes, as amended (the "PFA Act").

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

SECTION 1. Solely for purposes of Section 147(f) of the Code and the PFA Act the issuance of the PFA Bonds to finance and refinance the Project is hereby approved.

SECTION 2. The PFA Bonds, when and if issued, shall not be deemed an obligation of the Town of Addison, Texas, the State of Texas nor any other political subdivision thereof.

SECTION 3. The Council does hereby approve the issuance of the PFA Bonds solely for the purposes of Section 147(f) of the Code and the PFA Act.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

Town of Addison, Texas	
Resolution No.	

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the <u>28th</u> day of <u>JUNE</u> 2022.				
TOWN OF ADDISON, TEXAS				
	Joe Chow, Mayor			
ATTEST:				
Irma Parker, City Secretary	_			

Town of Addison, Texas Resolution No. ____

Exhibit A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Town of Addison, Texas (the "Town"), on June 28, 2022, at a meeting starting at 7:30 p.m. local time (CT), or as soon thereafter as the matter can be heard, at the hearing address set forth below, regarding the proposed issuance by the Public Finance Authority (the "Issuer") of its revenue bonds in one or more series from time to time pursuant to a plan of financing, in an amount to be issued with respect to the Project described below of not to exceed \$20,300,000 (the "Bonds"). The public hearing is required by Section 147(f) of Internal Revenue Code of 1986, as amended (the "Code"). The Project, the owner of the Project, the initial occupant of the Project, the Borrower of the proceeds of the Bonds, and the location of the Project are further described below:

- A. Airport Owner: Town of Addison, Texas
- B. Initial Occupant/Borrower: Addison Hangars LLC, a Delaware limited liability company or, another authorized affiliate of Sky Harbour Capital LLC
- C. Description of Project: This project includes the development of a general aviation and aircraft storage facility at Addison Airport in Addison, Texas ("ADS"), comprising six hangars aggregating approximately 101,000 square feet, including approximately 14,500 square feet of related office space for aviation use, and adjacent vehicle access, parking and landscape/hardscape improvements.
 - D. Project Location: 4505 Claire Chennault, Addison, Dallas County, Texas 75001.
 - E. Maximum amount of Bonds to be issued with respect to the Project: \$20,300,000.

The Bonds, including the principal of (premium, if any) and interest thereon, do not constitute a debt or a loan of credit or a pledge of the full faith and credit or taxing power of the Issuer, the Town, the State of Texas, or any political subdivision thereof, within the meaning of any State Constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Issuer, the Town, the State of Texas, or any political subdivision thereof. The Bonds shall not constitute, directly or indirectly, or contingently obligate or otherwise constitute a general obligation of or a charge against the general credit of the Issuer, the Town, the State of Texas, or any political subdivision thereof, but shall be special limited obligations of the Issuer payable solely from the sources provided for in the proceedings for the issuance of the Bonds. The Issuer has no taxing power.

At the time set for the public hearing, interested persons will be given a reasonable opportunity to express their views, both orally and in writing, on the merits of the Project, the location of the Project, the issuance of the Bonds, the plan of financing or related matters. Members of the public may attend the hearing in-person at the following address: 14681 Midway Road, Addison, TX 75001. Persons wishing to participate should submit a written request to speak to iparker@addisontx.gov (Town of Addison City Secretary) at least 24 hours before the hearing, however the hearing officer will also provide a time for additional comments at the end of the hearing. Oral remarks may not exceed five minutes in duration. Written comments may be submitted to the Town, on behalf of the Issuer, electronically at iparker@addisontx.gov and via physical delivery at the following address:

Town of Addison, Texas Resolution No.

DATE OF NOTICE: June, 2022	TOWN OF ADDISON, TEXAS
_	

Resolution No.

Council Meeting 12.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Innovative in Entrepreneurship & Business

Milestones: Leverage the new Customs facility to promote international travel use

of the Airport

Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action on a Resolution Approving the Ground Lease Agreement Between the Town of Addison and Sky Squared, LLC for Corporate and Commercial Aeronautical Use on Approximately 2.12 Acres of Improved Land at Addison Airport and Authorizing the City Manager to Execute the Ground Lease.

BACKGROUND:

In March 2021, Addison Airport advertised Request for Qualification (RFQ) #21-76 for the aeronautical redevelopment opportunity of three parcels of airport land, which opportunity included a 2.12-acre site. The Airport received one qualified response which triggered an existing contractual obligation under a ground lease agreement between the Town of Addison and Sky B&B, LLC ("Sky B&B"). Under that ground lease, the Town was required to provide Sky B&B written notice of the proposal it received for the subject 2.12-acre site. Upon receipt of the Town's written notice, Sky B&B elected to exercise its right under the ground lease to submit its own proposal to redevelop the subject 2.12-acre site. After careful consideration, Town staff elected to terminate RFQ #21-76 to pursue negotiations with Sky B&B for this redevelopment opportunity.

The same ownership of Sky B&B also formed Sky Squared, LLC, a Texas limited liability company ("Sky Squared"), as a special-purpose entity to hold the leasehold interest and ownership of the proposed building improvements made to the subject 2.12-acre site, subject to a 40-year ground lease agreement. The subject 2.12-acre site is immediately north of Sky B&B's hangar facility, southeast of the Taxiway Alpha and Taxilane Sierra intersection, and it has 214 linear feet of frontage along Taxiway Alpha.

In consideration of the proposed ground lease, Sky Squared proposes to construct a 31,000 gross square-foot executive jet hangar to accommodate up to Design Group III corporate aircraft (e.g., Gulfstream IV – VII, Global Express), with a 28-foot-high hangar door, and a clear span of no less than 110 feet. The

proposed use is for the storage of corporate aircraft owned or under the operational control of Sky B&B or Sky Squared, and for the sub-leasing of aircraft storage space to similar aeronautical operators. Pursuant to the terms of the proposed ground lease, Sky Squared's minimum capital investment will be \$4.5 million.

Pursuant to the terms of the Ground Lease, the Town agrees to reconstruct a 270-foot section of Eddie Rickenbacker Drive, an airport common area ingress/egress easement, which is in fair to poor condition; and a section of the Airport Vehicle Service Drive, a common area service road within the airport operating area for aircraft fuel trucks and other vehicles, also in fair to poor condition. The estimated costs for these improvements is \$500,000 and to be funded from the Airport's Capital Improvement Program.

The proposed redevelopment represents an estimated \$66,500 in annual real-estate revenue (ground rent) and \$23,000 in fuel flowage fees to the Airport. This equates to approximately \$4.2 million over the 40-year lease term.

Overview of Estimated Economic Impact						
Ground Rent	\$66,500	\$.72 per SFL ; 2.12 acres (92,347 SFL)				
Fuel Flowage Fees	\$23,000	Est. @ \$.73/hangar square feet				
Projected Business Property Tax (Aircraft)	\$154,000	Assume \$25 million @ \$.61466/mil (DCAD est. TOA rate)				
Projected Ad valorem Leasehold Tax	\$27,600	Assume \$4.5 million @ \$.61466/mil				
Total Annual Economic Benefit	\$271,100					
Net Cashflow over Lease Term	\$4,220,000	Ground Rent and Fuel Flowage Fees Only				
Net Present Value (NPV) of Cashflow (disc. @ 6%)	\$1,510,000					
Tenant's Minimum Capital Investment	\$4,500,000					

The proposed redevelopment and lease arrangement supports the Town's objectives for the Airport by enhancing the overall value of the Airport with new development, increased revenue, and an enhanced tax base. The proposed redevelopment and use of the facilities are consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

The city attorney has reviewed the Ground Lease and other related documents, finding the same acceptable for the Town's purposes.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - Sky Squared, LLC
Resolution - Ground Lease with Sky Squared, LLC
Site Location
Site Plan & Elevations
Summary of Lease Terms

Proposed Ground Lease Sky Squared, LLC

June 28, 2022



Proposal for Consideration and Consent



Sky Squared, LLC (Sly Squared) proposes a long-term Ground Lease with Town of Addison.



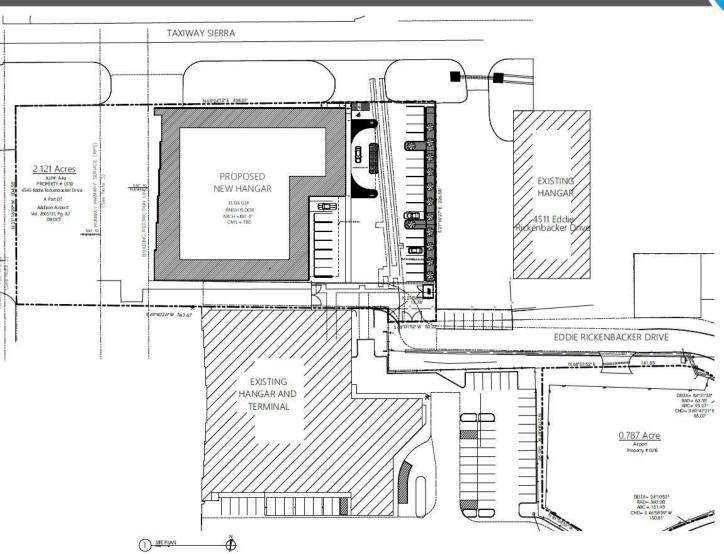


- Sky Squared proposes to construct a 31,000 square foot Executive/Corporate Jet Hangar.
- An expansion facility for Sky B&B and for limited sublease.
- Minimum Construction Value of New Building Improvements = \$4.5 million

Proposed Development

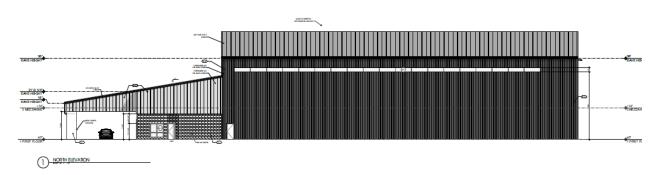
(ADDISON)

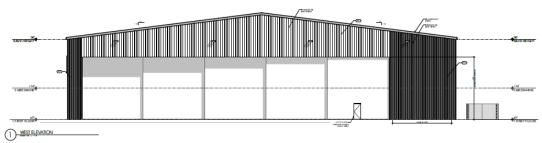
- Construct ~ 31,000 square foot hangar with nominal office & shop.
- 28-foot-high hangar doors with 110-foot clear open span.
- Designed for Aircraft Design Group II (Gulfstream V-VII, Global Express)
 <100,000 lb. dual wheel take-off weight.
- Designed to complement Sky B&B facility.

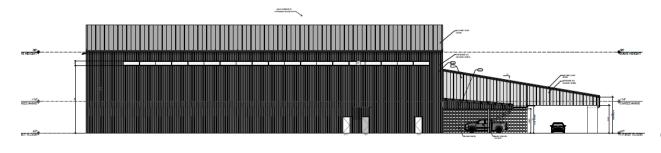


Proposed Development











2) SOUTH ELEVATION

Summary of Lease Terms

ADDISON

- 1. Lease Term: Commences upon Substantial Completion.
- 2. Rent: Annual Rent \$66,521 payable monthly installments over the term, or \$5,543.46 per month.
- 3. Adjustment of Rent: Biennial adjustment indexed to local Consumer Price Index (CPI).
- 4. Permitted and Restricted Use of Premises: Same as Sky B&B, including FAA Part 135 aircraft charter management, corporate flight operations, aircraft storage, light-maintenance of owned-aircraft, office administration in support of aeronautical operations. Same permitted use as Sky B&B.
 - Restricted Uses: No third-party aircraft maintenance, brokerage, flight school and retail services.
- 5. Building Improvements and Construction of New Improvements:
 - A. Existing Building Improvements <u>Lease Addendum #2:</u> Tenant responsible for demolition of existing conditions at its sole costs, expense and risk.
 - B. New Building Improvements Lease Addendum #3:
 - Minimum Construction Value of Building Improvements \$4.5M.
 - Construction to commence w/in 120 following issuance of Building Permits. If construction does not commence within 24-months after the Effective Date, Town may terminate Lease.
 - Substantial Completion is to be w/in 24 months of Construction Start Date.
 - Final Completion Date is 90-days following Substantial Completion.

Summary of Lease Terms (cont.)



- 6. Building Improvements and Construction of New Improvements:
 - A. Existing Building Improvements Lease Addendum #2: Tenant responsible for demolition of existing conditions at its sole costs, expense and risk.
 - B. New Building Improvements Lease Addendum #3:
 - Minimum Construction Value (separate from design costs) \$4.5M.
 - Construction to commence w/in 120 following issuance of Building Permits.
 - Substantial Completion to be w/in 24 months of Construction Start Date.
 - Irrevocable Letter of Credit with Town named as beneficiary in amount of 100% of construction costs to serve as security during period of construction.
- 7. Maintenance and Repair of Demised Premises: Lease Addendum #1 Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices.
- 8. Title to Building Improvements: Tenant owns the building improvements made to the Leased Premises. At end of Lease Term, building title reverts to the Town.

Summary of Lease Terms (cont.)



Town Obligated to complete certain Airport Infrastructure Repairs or Replacement:

- Eddie Rickenbacker Dr.: Reconstruct approx.
 270 feet of Eddie Rickenbacker Dr. To be completed within 1-year of Tenant's Final Completion Date.
- Airport Service Vehicle Road: Reconstruct approx. 214-feet of the Airport Vehicle Service Road along west boundary of Premises. To be completed within 18 months of Tenant's Construction Commencement Date.



Summary of Lease Terms (cont.)



Sky B&B Letter Agreement: Between Town and Sky B&B:

Upon Satisfactory Completion of the Sky Squared Building Improvements - amend <u>Sky B&B Ground Lease</u> as follows:

- A. Delete Section 54 Notice of Proposal
- B. Add Lease Addendum #1 Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices
- C. Should the actual total Construction Value of Sky Squared building improvements exceed \$4.5M, for every \$112,500 in excess of the stipulated Construction Value, the Sky B&B Ground Lease shall be amended to extend the remaining Term one additional year, not to exceed 480 full calendar months (eligible 8-years).

Economic Impact



Overview of Economic Impact		
Ground Rent	\$66,500	\$.72 per SFL; 2.12 acres (92,347
		SFL)
Fuel Flowage Fees	\$23,000	Est. @ \$.73/hangar square feet
Projected Business Property Tax	\$154,000	Assume \$25 million @ \$.61466/mil
(Aircraft)		(DCAD est. TOA rate)
Projected Ad valorem	\$27,600	Assume \$4.5 million @ \$.61466/mil
Leasehold Tax		
Total Annual Economic Benefit	\$271,100	
Net Cashflow over Lease Term	\$4,220,000	Ground Rent and FFF Only
Net Present Value (NPV) of	\$1,510,000	
Cashflow (disc. @ 6%)	\$1,510,000	
Tenant's Minimum Capital	\$4,500,000	
Investment		

Conclusion & Recommendation



The Sky Squared, LLC Development and Lease Proposal Achieves:

Council's Strategic Pillars

Innovation in Entrepreneurship & Business

- Milestone #2: Leveraging the new Customs Facility to promote international travel use of the Airport
- Milestone #3: Leverage the use of the Airport to maximize business growth and expansion.

Town's objectives for the Airport

- Enhances overall value of the Airport with new development
- Increases revenue
- Enhances tax base
- Consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

Recommendation: Administration recommends approval.



QUESTIONS?

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A GROUND LEASE AGREEMENT BETWEEN THE TOWN OF ADDISON AND SKY SQUARE, LLC FOR CORPORATE AND COMMERCIAL AERONAUTICAL USE ON APPROXIMATELY 2.12 ACRES OF IMPROVED LAND AT ADDISON AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GROUND LEASE; 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 Ground Lease between the Town of Addison and Sky Square, LLC for corporate and commercial aeronautical use on approximately 2.12-acres of improved land located at the Addison Airport, a copy of which is attached to this Resolution as <u>Exhibit A</u>, is hereby approved. The City Manager is hereby authorized to execute the Ground Lease.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^h day of JUNE 2022.

TOWN OF ADDISON, TEXAS

	10,111,01,122,1301,122,123
	Joe Chow, Mayor
ATTEST:	
Irma Parker, City Secretary	

EXHIBIT A

STATE OF TEXAS §

COUNTY OF DALLAS §

Summary of Exhibits

- · Exhibit 1: Legal Description of Addison Airport
- Exhibit 2: Property Survey of Demised Premises
- . Exhibit 3: Legal Description of Demised Premise
- Exhibit 4: Description of Building Improvements and Approved Site Plan
- Exhibit 5: Form of Irrevocable Standby Letter of Credit
- . Exhibit 6: Form of Memorandum of Lease
- . Exhibit 7: Master Landlord Sublease Consent Form
- . Exhibit 8: Description of Eddie Rickenbacker Drive
- Exhibit 9: Landlord's Areas of Repair or Reconstruction of Common Area Infrastructure
- Lease Addendum #1: Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices
- Lease Addendum #2 Construction of New Building Improvements

GROUND LEASE AGREEMENT

WITNESSETH:

WHEREAS, the Landlord is the record title owner of the Addison Airport, a description of which is set forth in <u>Exhibit 1</u> attached hereto and incorporated herein (the "<u>Airport</u>"); and

WHEREAS, Landlord is operator and manager of the Airport, and any person or entity appointed or authorized by Landlord from time to time to manage or operate the Airport on behalf of the Landlord (severally and/or collectively) hereinafter referred to as "Airport Manager" or "Manager"); and

WHEREAS, the Town of Addison, as a home-rule municipality, operates under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5, of the Texas Constitution. The Town of Addison, as a municipality, from time to time establishes and enforces federal, state and local ordinances, codes and regulations, which in doing so is acting in its governmental capacity, which may be the same or separate as its capacity as Landlord and Manager provided for herein; and

WHEREAS, Tenant desires to lease from the Landlord, and Landlord desires to lease to Tenant, a portion of the Airport generally described and hereinafter referred to as that certain parcel

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of improved and unimproved land consisting of approximately 2.121 acres (approximately 92,391 gross square feet) located at what is commonly known as 4485 Eddie Rickenbacker Drive (ALP#4A) within the Airport, as shown on Exhibit 2 and being more particularly described on Exhibit 3, each attached hereto and incorporated herein (collectively the "Property Survey"), together with the non-exclusive right to use the Common Facilities as defined in Section 17 hereinbelow (which parcel is referred to herein as the "Demised Premises") according to the terms and conditions set forth in this Agreement. The Property Survey, which is mutually agreed to and accepted by the Parties, was prepared by a licensed surveyor in the state of Texas and provides a legal description by metes and bounds and establishes the gross square feet of land area contained within the Demised Premises used as the multiplier to calculate Base Rent identified in Section 3 hereinbelow.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

In consideration of and subject to the terms, covenants and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation) whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances, the Rules and Regulations, and the Minimum Standards, now existing or as hereafter agreed to, adopted or imposed, (ii) all restrictive covenants affecting the Demised Premises, (iii) all restrictions, easements, and other encumbrances on or matters affecting the Demised Premises, whether of record or not or which could be revealed by a survey of the Demised Premises, and (iv) and all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust or monetary liens affecting the Demised Premises which are not filed of record.

Section 2. Term:

Subject to the termination and all other provisions of this Lease, the term hereof (the "Term") shall commence on the earlier of (i) the day immediately following forty-eight (48) full calendar months after the Effective Date, or (ii) the first day of the first calendar month after Substantial Completion of the New Building Improvements (as such term is defined in Lease Addendum #2) (the "Commencement Date"), and shall end the last day of the four-hundred and eightieth (480th) full calendar month following the Commencement Date (and including the month of the Commencement Date). The period of time beginning upon the Effective Date and ending upon the Commencement Date is herein referred to as the "Preliminary Period". Any entry upon and/or use of occupancy of the Demised Premises by Tenant during the Preliminary Period shall be subject to all of the terms and conditions of this Lease.

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After the third anniversary date of the Commencement Date (i.e., commencement of the fourth year of this Lease), if Tenant is not then otherwise in default of this Lease, Tenant shall have the right to early terminate this Lease, subject to all of the provisions herein regarding the condition of the Demised Premises (and including any improvements thereon) at the time of expiration or termination of this Lease and all other applicable provisions, provided Tenant gives the Landlord at least one-hundred eighty (180) days prior written notice of its intent to early terminate this Lease specifying therein the Effective Date of Termination (herein so called). Upon the Effective Date of Termination, Tenant shall immediately vacate the Demised Premises, at which time the ownership of the Building Improvements and any other improvements shall revert automatically to Landlord pursuant to Section 28.C. below, without further action on the part of Landlord.

Section 3. Rental; Security Deposit:

- A. Subject to adjustment as hereinbelow provided, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, rental each month over the Term for the Demised Premises as set forth below:
 - 1. <u>Base Rent</u>: Tenant agrees to and shall pay Landlord annual rental for the Demised Premises in the amount of <u>Sixty-Six Thousand</u>, <u>Five Hundred Twenty-One Dollars and Fifty-Two Cents</u> (\$66,521.52) (Note: Base Rent is calculated at \$0.72 per gross square foot located within the Demised Premises as determined by the Property Survey accepted by the parties) which amount shall be paid by Tenant in twelve equal monthly installments in advance on the first day of each calendar month (the "<u>Base Rent</u>", which shall be adjusted as set forth herein). The first monthly payment or installment of Base Rent in the amount of <u>Five Thousand</u>, <u>Five Hundred Forty-Three Dollars and 46/100</u> (\$5,543.46) is due and payable on or before the Commencement Date. Thereafter, another payment or installment of the Base Rent, subject to adjustment as set forth below, shall be due and payable on the first day of each calendar month during the term hereof. All Rent is due on the first of each month and is delinquent after the tenth (10th) day of each month and subject to the provisions of <u>Section 39 below</u>.
 - 2. In the event the Commencement Date is a date other than the first day of a calendar month, the monthly Base Rent for any partial month at the beginning of the Term shall equal the product of the Base Rent multiplied by a fraction, the numerator of which is the number of days in the partial month (beginning with the Commencement Date and ending with the last day of the partial month) and the denominator of which is the number of days in such full calendar month. Payment of Base Rent for any fractional calendar month at the end of the Term shall be similarly prorated.
 - 3. For purposes of this Lease, the term "Rent" means Base Rent, additional rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for non-payment of Base Rent.
 - B. Security Deposit: No Security Deposit required.

Section 4. Adjustment of Rental:

- A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly Rental due under Section 3.A.1. (Base Rent) shall be adjusted as follows:
- B. Annual Rent (including Base Rent) shall be adjusted to reflect changes in the Consumers' Price Index All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing as of the Commencement Date. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.
 - 1. Beginning with the first full month following the then applicable Adjustment Date, the annual Rent (including the Base Rent)) shall be adjusted so that it equals the product of the annual Rent (including the Base Rent) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the "Adjusted Rental"), but in no event shall such annual Rent (including the Base Rent) ever be decreased below the Base Rent set forth in Section 3.A.1.
 - 2. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

Section 5. Use of Demised Premises:

During the Term the Demised Premises shall be used and occupied by Tenant as set forth hereinbelow:

A. Permitted Uses:

The Demised Premises may be used and occupied by Tenant only for the following uses:

- Constructing, owning and operating office and hangar facilities used directly in support of and in connection with FAA Part 135 charter management and corporate flight operations;
- Office or administrative space used in support of aeronautical operations or services, namely corporate flight operations offices and/or charter and corporate aircraft management services and charter services;
- 3. The storage of corporate aircraft owned, leased or exclusively controlled (i. e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by Tenant;

- 4. The storage of corporate aircraft owned, leased or exclusively controlled (i. e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by any sub-tenant under separate written agreement with Tenant;
- B. Maintenance, repair and incidental support services for aircraft stored or based at the Demised Premises, including aircraft kept subject to a sublease.
 - C. Prohibited or Restricted Use of Demised Premises:

The following uses are expressly prohibited:

- Third-party aircraft maintenance and repair, including but not limited to airframe, power plant and avionics. For this subsection, the term "third-party aircraft" shall mean aircraft not expressly in the care, custody and control of Tenant or, a Tenant Affiliate (as defined below) or, any aircraft not subject to a valid sublease agreement as provided for in Section 9.B below;
- Third-party brokerage of aircraft or aircraft parts;
- 3. Aircraft fueling operations without valid license or permit;
- Flight school or training;
- 5. Ground transportation for rent or hire (including taxi and limousine service);
- Retail services including food sales; barber and valet services, alcoholic beverage sales, sales of pilot supplies; newsstands and gifts;
- 7. Any use that would conflict with the FAA policy on the Non-Aeronautical Use of Airport Hangars as may be amended or modified (FR/Vol. 81, No. 115, June 15, 2016; 14 CFR Chapter 1 [Docket No. FAA 2014-0463]).
- 8. For any illegal purpose or activity (federal, state, county and municipal laws, rules, regulations, standards and policies) that, in Landlord's reasonable opinion, would create a nuisance, unreasonably disturb other tenants of the Airport, or cause Landlord to incur an increase insurance costs for Landlord;
- 9. Tenant acknowledges that Landlord is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to take any action or omit to take any action in relation to the Lease Premises that would cause Landlord to be in violation of such regulations or standards.
- 10. The Tenant shall not at any time abandon or leave the Demised Premises vacant for any extended period of time but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of use for which the Demised Premises are leased, except during periods in which the Demised Premises

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may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations, all such repairs and alterations to be diligently pursued to completion;

- 11. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.
- **D.** The Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Section 6. Construction of Improvements:

- A. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant will cause to be constructed on the Demised Premises throughout the Term, buildings and other improvements at Tenant's sole cost, expense and risk (except as may be otherwise agreed to in writing by Landlord and Tenant), which are to be approved in advance by Landlord. For purposes herein, the term "Building Improvements" shall mean, without limitation any existing improvements on or made to the Demised Premises as of the Effective Date ("Existing Building Improvements"), if any, and the New Building Improvements as defined in Lease Addendum #2 (as provided for below), and any other future building or improvements made to, constructed, installed, located or placed upon the Demised Premises during the Term, as the Term may be extended or modified. Except as provided for by this Lease (including Lease Addendum #2, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.
- B. Construction of New Building Improvements: See <u>Lease Addendum #2</u> attached hereto and incorporated herein by reference.

Section 7. Acceptance of Demised Premises:

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT

MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL REGULATIONS OR STATUTES, CODES, ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in <u>Section 32</u>, below.

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

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, 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) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed. Landlord agrees to diligently and in good faith review and consider approval of the Design Plan, and once the Design Plan has been finally approved, to prosecute and expedite issuance of the associated permits.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (as of the Effective Date, the Airport Manager is as set forth in the Recitals, above, but the Airport Manager may be changed or modified by the Landlord, and for purposes of this Lease the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws. ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the Design Plan..

B. Tenant shall comply with all noise abatement standards at the Airport at all times, shall notify any employee, guest or invitee of Tenant, including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

Section 9. Assignment, Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:

A. Assignment:

- Without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole and absolute discretion and opinion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise, (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a "Permitted Transferee" as defined below, a "Tenant Affiliate" as defined below, and to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) nor sublet (except as provided for in Section 9.B below) in whole or in part any portion of the Demised Premises, and 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 subject to notice and cure as provided in Section 23 of the Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlordapproved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an Event of Default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and 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. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.
- 2. If consent by Landlord to an assignment is required hereunder (other than subletting or to a leasehold mortgagee), Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include, in addition to any other information or materials that Landlord may request: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) financial statements prepared or reviewed by an independent CPA, or other evidence of the proposed assignee to perform its obligations under this Lease.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date cease to own or have voting control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or inter vivos of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A "Permitted Transferee" for purpose of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above; and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an "assignment" hereunder. Tenant shall have the right to assign this Lease or sublease all or a portion of the Demised Premises without Landlord's consent to any person or entity that is under the direct control of Tenant ("Tenant Affiliate"). Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership of voting securities or voting control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities.

B. Subletting:

- Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting aircraft storage only, provided that each sublease is evidenced by written agreement, signed and executed by Tenant and each and every sublessee, which is made subject to the "Master Landlord Sublease Consent," substantially in the form attached hereto and incorporated herein by reference as Exhibit 7 to this Lease and which fairly states:
 - a. Each sublessee agrees to be bound by the terms and provisions of this Lease, including the provisions of <u>Section 5</u> pertaining to the use of the Demised Premises and <u>Section 18</u>, regarding the Airport's Governing Documents, to the extent such extends to a sublessee;
 - b. In the event of any conflict between the terms of this Lease and the terms of the sublease, the terms of the Lease shall control;
 - c. Such subletting shall not constitute a novation of the Lease;
 - d. Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease;
 - e. Any such sublease is to automatically terminate upon termination of this Lease notwithstanding any other provision of the sublease to the contrary; Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under any sublease.

- f. In the event of occurrence of an Event of Default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
- Neither this consent, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.
- 3. Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any violation of any terms and conditions of this Lease by a sublessee may constitute an Event of Default, subject to notice and cure as provided in Section 23 of the Lease.
- 4. Upon request by Landlord, Tenant shall provide to Landlord within five (5) business days of receipt of each request a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes an Event of Default, subject to notice and cure, as provided in Section 23 of this Lease.

C. Mortgaging of Leasehold Estate:

1. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the New Building Improvements described in Lease Addendum #2, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. If Tenant borrows money for any purpose provided for above, and the lender requires a mortgage, deed of trust or some other form of security interest (a "Mortgage") to secure the loan, then Tenant may, without Landlord's further consent, enter into a Mortgage with a bank, lender (or, if the bank's or lender's interest have been assigned by or on behalf of a mortgage beneficiary) herein referred to as a "Leasehold Mortgagee"). The Leasehold Mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold

mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the Rent due hereunder and otherwise fully perform the terms and conditions of this Lease.

- 2. Any Mortgage affecting Tenant's leasehold estate shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said Mortgage.
- 3. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a Mortgage and written notice to such effect has been given to Landlord, to give the Leasehold Mortgagee at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the Leasehold Mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such Mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such Leasehold Mortgagee the notice provided for herein and affording any such Leasehold Mortgagee the right to cure such default as provided for herein.
- Landlord further agrees to execute and deliver to any proposed Leasehold Mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such Leasehold Mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such Leasehold Mortgagee performs all of the obligations of Tenant hereunder and is not in default; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such Leasehold Mortgagee or its successors and assigns after foreclosure or transfer in lieu of foreclosure shall not and does not have the right and shall not and does not have the power to assign (as defined in Subsection A. of this Section above) this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed Leasehold Mortgagee any other documents which such proposed Leasehold Mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created

hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgage of such proposed Leasehold Mortgagee. If the Leasehold Mortgagee succeeds to Tenant's interest under this Lease, the Leasehold Mortgagee shall attorn to Landlord as if it were the Tenant under this Lease. The Leasehold Mortgagee's duty to so attorn to Landlord arises immediately upon the Leasehold Mortgagee succeeding to Tenant's interest under this Lease, and the duty to attorn is self-executing, requiring no formal writing or further action by Landlord or the Leasehold Mortgagee.

Section 10. Property Taxes and Assessments:

Following the Commencement Date, Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to affect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises (if Tenant has title to and owns the same) and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense, Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof. Notwithstanding the foregoing, Tenant shall not contest the determination that the buildings and/or improvements are subject to taxation. If a final (non-appealable) determination is rendered by Dallas Central Appraisal District or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to Landlord in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, Rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

B. If Landlord holds title to the Building Improvements pursuant to Section 28.B, after conveyance of the same by Tenant (which conveyance shall be in form and content acceptable to Landlord), and DCAD thereafter assesses ad valorem property tax thereon, Landlord will either, at Landlord's option, (i) credit the amount of such tax that may be due and owing to the Town of Addison ("City Tax") against Rent thereafter due, which credit may be applied by Landlord during the six (6) months after the tax collector levies the City Tax against the Building Improvements, or (ii) pay to Tenant an amount equal to the City Tax, which payment shall be made by Landlord not later than 30 days after the date Tenant pays the City Tax (and such payment or credit, if any,

is agreed to as a part of this Lease in order to promote the economic development of the Town of Addison and to stimulate business and commercial activity within the Town of Addison and the Airport). The said credit or payment is conditioned upon Tenant's timely (non-delinquent) payment of the City Tax; if the City Tax is delinquent at the time it is paid by Tenant, Landlord shall have no obligation to provide such credit or payment. Such credit or payment shall occur only for the 10-year period that begins in the year that the City Tax is first levied against the Building Improvements as described in this subsection B.

Section 11. Maintenance and Repair of Demised Premises:

- A. Tenant shall, throughout the term hereof, maintain in good repair and in a first class condition (as defined in Lease Addendum #1) (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas) all the Demised Premises and all buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised Premises.
- B. Notwithstanding the foregoing, set forth as "Lease Addendum #1" attached hereto and incorporated herein by reference and made a part hereof, are "Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices," which are intended as maintenance and repair standards and practices Landlord expects of Tenant. Tenant (and any of its successors or assigns) hereby agrees to meet or exceed the Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices throughout the Term. Notwithstanding the foregoing, as provided in Section 18 below, Landlord reserves the right, in its sole discretion, to introduce and adopt other regulations deemed appropriate and necessary by Landlord for the purpose, among other things, protection of the property of Landlord. In the event Landlord should formally adopt similar leasehold maintenance and repair standards governing such practices of all ground leaseholds at the Airport ("Replacement Maintenance Standards"), such encompassing regulations and practices shall supersede and replace Lease Addendum #1 in its entirety upon the effective date of such Replacement Maintenance Standards for the duration of the Term or until otherwise modified, repealed, or revised by Landlord.

Section 12. Alterations, Additions and Improvements:

After completion of the New Building Improvements described in Lease Addendum #2, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises or any improvements thereon or modifications thereto without the prior written consent of Landlord or Manager. Consent for non-structural alterations,

additions or improvements shall not be unreasonably withheld by Landlord or Manager. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and requirements set out above, and in Lease Addendum#2 and Section 8, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in Lease Addendum#2).

Section 13. Insurance and Bonds:

- A. Unless otherwise specified herein, at all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:
 - 1. Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be affected.
 - 2. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
 - 3. Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.
 - If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by

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reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

- 5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
- 6. Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.
- 7. Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.
- 8. Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000 for bodily injury and property damage.
- 9. If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by Landlord, Tenant shall maintain a minimum of \$1,000,000 in Pollution Liability Insurance coverage, which may be satisfied through sudden and accidental pollution coverage under Tenant's commercial general liability policy.
- 10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.
- B. Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:
 - The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds, or loss payees as the case may be, except with respect to the professional liability policies and workers compensation insurance;

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- All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance;
- A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;
- 4. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.);
- All insurance policies shall be endorsed to require the insurer to immediately notify Landlord and the Airport Manager of any material change in the insurance coverages;
- All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;
- Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and
- Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:
 - List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and
 - 2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.
- D. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

Section 14. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.
- In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof. Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). Notwithstanding the foregoing, in the event the Building Improvements or any other improvements on the Demised Premises shall be destroyed or substantially damaged during the last five (5) years of the Lease Term, then Tenant shall have no obligations for Restoration and shall notify Landlord in writing within thirty (30) days of such substantial damage or destruction whether Tenant elects to undertake Restoration or terminate this Lease. Tenant's failure to timely make such election as aforesaid shall be deemed an election by Tenant to terminate this Lease. Tenant's termination of this Lease pursuant to this Section 14 shall otherwise be in accordance with the terms and provisions of this Lease. For purposes of the foregoing, "substantial" shall mean such damage to the Building Improvements as shall render the Building Improvements unfit for their intended purpose. For purposes of this Section 14.B. and Section 14.E., the term "promptly" shall mean within ninety (90) days after Landlord and Tenant have mutually agreed upon the plans and specifications for the Restoration, provided Tenant shall in good faith and with reasonable diligence cooperate with Landlord in first proposing and then agreeing upon plans and specifications for the Restoration. All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6 (including Lease Addendum #2), 8, and 13 hereof.
- C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with Sections 6 and 21 hereof and other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.

- **D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ("Net Insurance Proceeds")) shall be applied as follows:
 - 1. Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
 - 2. Upon receipt by Landlord of the certificate and opinion required by the foregoing clauses (1) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.
- E. In the event that Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.
- **F.** In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the term of this Lease, and all insurance proceeds shall be paid to Landlord.

Section 15. Condemnation:

A. If during the term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the

date that said condemning authority takes possession of the Demised 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 Demised 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, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The Rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the Demised Premises.
- C. If this Lease is not terminated pursuant to <u>Section 15.A.</u>, above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to <u>Section 15.A.</u> condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

Section 16. Utilities:

Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities:

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 Demised Premises, other Airport installations, and all other reasonable services which may be provided with or 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, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

Section 18. Airport Governing Documents:

Landlord, in its sole and absolute discretion, shall have the right from time to time to adopt, amend, modify, alter, and terminate in a reasonable manner certain rules and regulations, standards of operations, policies, procedures and practices deemed necessary and appropriate for the purpose of assuring the safety, welfare, fairness and equality without unjust discrimination, convenience and protection of property of Landlord, Tenant, other tenants and users of the Airport, their customers, and the general public (herein collectively referred to as the "Airport Governing Documents.") Tenant hereby agrees to comply fully at all times with these Airport Governing Documents.

As of the Effective Date of this Lease such Airport Governing Documents include, without limitation:

- Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers vr. 2004 (also commonly referred to as the "Minimum Standards" or "Airport Minimum Standards"); and
- Addison Airport Rules and Regulations vr. 2010 (also commonly referred to as the "Rules and Regulations" or "Airport Rules and Regulations"), which shall govern Tenant's use of the Demised Premises and all Common Facilities of the Airport; and
- 3. Addison Airport Rates and Charges a schedule of the current rates, fees and charges assessed by the Airport for various services and facilities, which are generally approved in connection with the Airport's annual budgetary process but may be amended from time to time as deemed reasonable and appropriate.

Landlord has also adopted the National Business Aviation Association (NBAA) Noise Abatement Program (https://nbaa.org/aircraft-operations/environment/noise-abatement-program/) revised in 2015. Unless Landlord adopts a noise abatement program of its own, Tenant and Tenant's subtenants and their aeronautical guest and invitees are required to comply with NBAA's recommended noise abatement procedures, which are suitable for any aircraft type and airport operating environment.

Section 19. Signs and Equipment:

After first securing Landlord's approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised 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, 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).

Section 20. Landlord's Right of Entry:

Landlord and Landlord's authorized representatives shall have the right, during normal business hours and upon one (1) day notice (not counting Saturdays, Sundays or holidays), except in the case of emergencies, to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser 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 Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity and Exculpation:

A. Exculpation.

Landlord and the elected officials, the officers, employees, representatives, agents, and volunteers of Landlord, individually or collectively, in both their official and private capacities, (each a "Landlord Person" and collectively the "Landlord Persons"), and Airport Manager and Airport Manager's owner's, officers, employees, representatives, and agents, in both their official and private capacities, (each a "Manager Person" and collectively the "Manager Persons"), shall not be liable to Tenant or to any of Tenant's owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, subcontractors, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, and subcontractors, (each a "Tenant Person" and collectively "Tenant Persons"), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or any Tenant Persons and/or the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder.

B. Tenant's Indemnity Obligation.

Tenant shall DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS Landlord and all other Landlord Persons and Airport Manager and all Manager Persons (Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, being collectively the "Indemnified Persons") from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liability, 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 of the Indemnified Persons, whether directly or indirectly (collectively for purposes of this Section, "Damages"), that result from,

relate to, are based upon, or arise out of, in whole or in part, (I) any condition of the Demised Premises caused in whole or in part by Tenant or by any Tenant Persons; (II) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease; (III) any representations or warranties by Tenant under this Lease; (IV) any personal injuries (including but not limited to death) to any Tenant Persons and to any third persons or parties arising out of or in connection with Tenant's use and occupancy of the Demised Premises under this Lease; and/or (V) the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons for any reason, including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling. THIS 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 (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PERSONS (OR ANY OF THEM), OR CONDUCT BY THE INDEMNIFIED PERSONS (OR ANY OF THEM) THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TO THE EXTENT GROSS NEGLIGENCE AND/OR WILLFUL CONDUCT ARE ALLEGED SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE INDEMNIFIED PERSONS. Tenant's liability under this indemnity obligation shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Indemnified Person's or Indemnified Persons' 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 Indemnified Person's or Indemnified Persons' defense costs and attorneys' fees shall be limited to a portion of the defense costs and attorneys' fees equal to the Indemnified Person's or Indemnified Persons' 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 and Airport Manager in writing of any claim or demand against any Indemnified Persons, Tenant, or any Tenant Persons 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 Indemnified Persons shall have the right, at the Indemnified Person's or Indemnified Persons' option and own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release.

Tenant hereby RELEASES Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, (i) for any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and (ii) any loss or damage that may result from or be occasioned by or through the acts or omissions of other

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tenants of Landlord or caused by operations in construction of any private, public, or quasipublic work, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

D. THE PROVISIONS OF THIS <u>SECTION 21</u> SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

Section 22. Environmental Compliance:

- 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 directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised 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 (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the Occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").
- existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws"); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting

under Tenant, during the Term of this Lease, Tenant shall, at Tenant's own 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 Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

TENANT'S FURTHER INDEMNITY OBLIGATION. TENANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FROM AND AGAINST, AND REIMBURSE LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FOR, ANY AND ALL OBLIGATIONS, DAMAGES, INJUNCTIONS, FINES, PENALTIES, DEMANDS, CLAIMS, COSTS, FEES, CHARGES, EXPENSES, ACTIONS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, SUITS, PROCEEDINGS AND LOSSES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS), AND ALL CLEANUP OR REMOVAL COSTS (COLLECTIVELY FOR PURPOSES OF THIS SUBSECTION, "DAMAGES") AND ALL ACTIONS OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH, (I) THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE AIRPORT, INCLUDING THE COMMON FACILITIES, OR ANY PROPERTY ADJACENT TO THE AIRPORT, BY TENANT OR ANY TENANT PERSONS, AND (II) ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT'S FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY AUTHORITY UNDER THE CLEANUP LAWS OR ANY ENVIRONMENTAL LAW, RULE, STANDARD, REGULATION, OR POLICY. 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 [BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION OF LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT MAY GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TO THE EXTENT GROSS AND/OR WILLFUL MISCONDUCT ARE ALLEGED NEGLIGENCE SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE LANDLORD, AND ANY OTHER LANDLORD PERSON, AND AIRPORT MANAGER, AND ANY OTHER MANAGER PERSON. TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS'

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 INDEMNIFIED PERSON'S OR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSON'S OR THE DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. 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 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.
- prior to the Commencement Date of the Lease, the Tenant, at Tenant's sole cost and expense, is entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If a Phase I ESA indicates the likely presence of Hazardous Materials (as defined in this Lease) on the Demised Premises, Tenant shall be entitled to (i) ask Landlord to remedy the reported condition at Landlord's sole cost and expense if, and only if, a Phase II ESA is not recommended; or (ii) if a Phase II ESA is recommended, Tenant may, at its sole option, terminate the Lease or conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to: (a) remedy the condition at it sole cost, expense and risk, or (b) ask Landlord to remedy the reported condition at Landlord's sole cost, expense and risk, which the Town shall make such determination at its sole discretion, or (c) elect to terminate and disaffirm the Lease, in which case the Lease shall become null and void *ab inito*, whereupon no further obligation shall be borne of either party hereto. A full copy of any ESA shall be delivered promptly to Landlord upon its issuance.
- E. Survival: Tenant's defense and indemnity and hold harmless obligation and Tenant's liability pursuant to the terms of <u>Sections 6, 21 and 22</u> shall survive the expiration or earlier termination of this Lease.

Section 23. Default by Tenant:

Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an Event of Default (herein so called) by Tenant under this Lease:

A. Failure of Tenant to pay any installment of Rent or any other sum payable to Landlord hereunder, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is to make under this Lease, on the date that same is due and such failure shall continue for a period of ten (10) days after the date on which such payment is to be made.

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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, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A. of this Section 23) and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant; provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty [60] days) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

C. INTENTIONALLY DELETED.

- **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 section or chapter of the Bankruptcy Code, 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 and same is not dismissed within sixty (60) days of filing.
- F. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations and same is not dismissed within sixty (60) days of filing.
- **G.** Abandonment or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of thirty (30) consecutive days.
- H. Tenant is in default of any other lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

Section 24. Remedies of Landlord:

- A. Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:
 - 1. Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant. Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in <u>subsection B</u>. of this Section.

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- Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.
- Recover unpaid Rent and any Damages (as defined below);
- 4. Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.
- Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.
- Sue for eviction, specific enforcement, equitable relief, Rent, damages, or any other available remedy.
- 7. Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.
- Withhold or suspend any payment that this Lease would otherwise require Landlord to make.
- Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).
- **B.** For purposes of this Section, "Damages" includes, without limitation, all actual, incidental, and consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (i) recovering possession of the Demised Premises, (ii) removing and storing Tenant's and any other occupant's property, (iii) re-letting the Demised Premises, including, without limitation, the costs of brokerage commissions and cleaning, decorating, repairing, or altering the Demised Premises for a substitute tenant or tenants, (iv) collecting any money owed by Tenant or a substitute tenant, (v) repairing any damage caused by any Tenant Persons, (vi) performing any obligation of Tenant under the Lease, and (vii) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.
- C. Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation,

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Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

D. Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or 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.

Section 25. Default by Landlord:

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential 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 recovery or entitle Tenant to take any action whatsoever with regard to the Demised 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. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

- A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding Rental installment(s) due by Tenant to Landlord hereunder;
- **B.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or
- C. Seek, through judicial action, a declaratory judgment action, and limited equitable remedies of injunction and specific performance, as well as actual damages directly resulting from such default (but subject to the provisions of <u>subsection B. of Section 26</u>, below).

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.

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Section 26. Mitigation of Damages:

- A. In lieu of any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than 90 days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this <u>subsection A</u>. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in <u>Section 24</u>, above).
- B. Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:
 - Landlord will have no obligation to solicit or entertain negotiations with any other
 prospective tenants of the Demised Premises until and unless Landlord obtains full and
 complete possession of the Demised Premises, including without limitation, the final and
 unappealable legal right to relet the Demised Premises free of any claim of Tenant.
 - Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at Addison Airport.
 - 3. Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at Addison Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.
 - Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.
 - 5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's commercially reasonable judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first-class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.
 - Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and **Tenant hereby waives and releases**, to the fullest extent legally permissible, any right to assert in any action by

Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No rent collected from a substitute tenant for any month in excess of the rent due under the Lease for that month will be credited or offset against unpaid rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. To the fullest extent permitted by LAW, Tenant waives any other obligation by Landlord to mitigate its damages after Tenant fails to pay Rent or vacates or abandons the Premises.

C. Tenant's right to seek actual damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. 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 Demised Premises, which loss or damage is covered by valid and collectible casualty, 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.

Section 28. Title to Improvements:

- A. Any and all improvements on the Demised Premises, including, without limitation, any buildings constructed on the Demised Premises by or for Tenant, shall be owned by Tenant during the term of this Agreement. The term "improvements" shall include, without limitation, the Building Improvements) as defined in Section 6.
- B. Provided Tenant is not then in default of this Lease, Tenant may, at any time after the Commencement Date, deed or otherwise convey (in form and content acceptable to Landlord, and free and clear of any and all claims and any and all liens or other encumbrances) ownership of the Building Improvements constructed upon the Demised Premises to Landlord, and upon such conveyance the same shall merge with the title of the Demised Premises, free and clear of any claim

of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord with all other terms and conditions of the Lease remaining the same (e.g., following such conveyance, Tenant shall continue to be responsible and liable for all maintenance, repair, and upkeep of, and all other provisions of this Lease relating to, the Building Improvements, shall continue to carry insurance with respect to the Building Improvements, shall have the Restoration obligations set forth in Section 14, etc., as if the Building Improvements had not been deeded or otherwise conveyed to Landlord). In the event of such conveyance, Landlord agrees, subject to the provisions of this subsection, to accept title and ownership of the Building Improvements provided there are no pending casualty claims against the Building Improvements. As a condition to accepting a conveyance of the Building Improvements,, Landlord reserves the right at its sole cost, expense and discretion, to procure a Phase I environmental site assessment (and a Phase II, if such is indicated as necessary by the Phase I report) and an property condition assessment report pursuant to ASTM E2018 (or the equivalent prevailing industry standard at such time) to establish the condition of the Building Improvements at time of conveyance; if Landlord, in its sole and absolute discretion, finds something objectionable in any such assessments, Landlord may decline to accept the conveyance. Further, the Building Improvements, at the time of such conveyance, shall be in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas); if the Building Improvements are not in such good repair and condition, Landlord may decline to accept the conveyance.

Upon the termination of this Agreement, whether by expiration of the term hereof or by reason of default on the part of Tenant, or for any other reason whatsoever, the improvements (including, without limitation, the Building Improvements), and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord; provided, however: (i) Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised 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 from the Demised Premises and restore the Demised Premises to the condition in which the same existed on the 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. Upon such termination, Tenant shall deliver the Demised Premises to Landlord in good condition, reasonable wear and tear excepted, and shall, at Landlord's request, execute a recordable instrument evidencing the termination of this Agreement and stating the termination or expiration date.

Section 29. Mechanics' and Materialmen's Liens; Lien for Rent:

A. Tenant agrees to DEFEND, INDEMNIFY and HOLD HARMLESS to the full extent as provided in this Lease, Landlord and all Landlord Persons, and Airport Manager and all Manager Persons, from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option,

may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 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 Demised Premises, unless a shorter period of time is dictated by applicable law.

Section 30. INTENTIONALLY DELETED.

Section 31. Quiet Enjoyment and Subordination:

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the full term of this Lease. 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 hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any 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 on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, 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 hereunder and attorn to the purchaser. 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 the foreclosure of such mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis:

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 Demised Premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over:

Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised 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 twenty-five percent (125%) of the Base Rent paid for the last month of the Term of this Lease.

Section 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. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 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 Demised 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 Demised Premises.

Section 36. Attorneys' Fees:

If, on account of any breach or default by either Party to this Lease, it shall become necessary for either Party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

Section 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.

Section 38. Estoppel Certificates:

- A. Tenant agrees that from time to time, upon not less than ten (10) days prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying 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).
 - 2. The dates to which Rent and other charges have been paid.
- 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.

- 4. If requested by Landlord, Tenant will not pay Rent for 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.
- B. Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying 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).
 - 2. The dates to which Rent and other charges have been paid.
 - 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.

Section 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 at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) 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 cash, 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. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

Section 40. 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"), and Tenant agrees and consents to the same. 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 Demised 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 limit or obstruct access to the Demised Premises and/or to the Airport; (ii) releases, waives and discharges Landlord and Manager, and Landlord Persons and

Manager Persons, 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 Demised 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 any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section 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 Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Independent Contractor:

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

Section 42. Force Majeure:

- A. 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, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, 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.
- **B.** In the event performance by Tenant 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, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or hindered.

Section 43. 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.

Section 44. 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. The terms "day", "week,", "month", "year" or any plural form of said terms shall be construed to mean on a calendar basis unless expressly stated otherwise. For the purposes herein, the term "business day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Texas are authorized or required by law or other governmental action to close.

Section 45. Captions:

The captions or headings, sections, 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.

Section 46. Successors; No Third-Party Beneficiaries; No Waiver of Immunity; No Tax Representation:

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.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Town of Addison, Landlord, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability:

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the term of this Lease does not exceed 40 years (480 months); if it should be determined that the term of this Lease exceeds such period of time, the term hereof shall be reformed so as to make the term hereof not exceed such period of time.

Section 48. Notices:

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified

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mail, return receipt requested, or (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, and (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.

Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001

Email: wpierson@addisontx.gov

With Copy to:

Town of Addison, Texas c/o Addison Airport Manager 4545 Jimmy Doolittle Road, Suite 200 Addison, Texas 75001 Attn: Real Estate Manager Email: bill.dyer@addisonairport.net

and

Town of Addison, Texas City Attorney P.O. Box 9010 Addison, Texas 75001

Section 49. 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.

TO TENANT:

Sky Squared LLC c/o Ronald L. Holmes, Manager Holmes Firm PC 14241 Dallas Parkway, Suite 800 Dallas, Texas 75254

Email: ron@theholmesfirm.com

With Copy to:

Sky Squared LLC 8111 Westchester Drive, Ste. 600 Dallas, Texas 75225 Attn: Laura Whitfield, Vice President Email: laura.whitfield@energytransfer.cor

0150-1705

500,000,000

Section 50. 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.

Section 51. Consent; "Includes" and "Including"; Recitals:

Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

Section 52. Governing Law and Venue; Survivability of Rights and Remedies:

- A. 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, without regard to "choice of laws" rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.
- B. Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the term hereof shall survive the cancellation, expiration or termination of this Lease. Notwithstanding anything to the contrary, the parties obligations and liabilities pursuant to Sections 6, 21, 22, 28 Shall survive the expiration or earlier termination of this Lease as deemed necessary for the enforcement of the parties rights and obligations thereunder.

Section 53. Entire Agreement and Amendments; Authorized Persons:

This Lease, consisting of fifty-three (53) Sections and Exhibits 1- 9 together with Lease Addendum #1 and Lease Addendum #2 attached hereto, 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.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

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

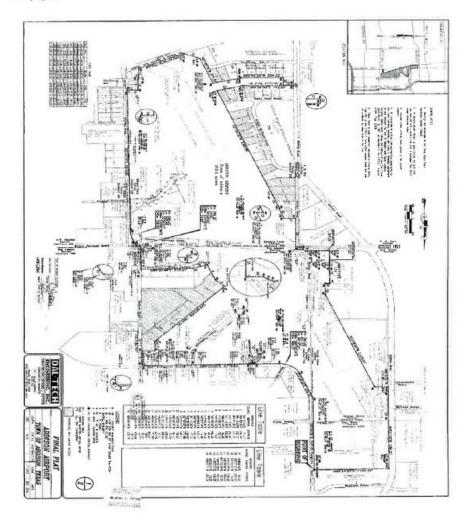
TENANT:	LANDLORD:
SKY SQUARED LLC a Texas limited liability company	TOWN OF ADDISON, TEXAS a home-rule municipality
Ronald L. Holmes, Manager	By: Wesley S. Pierson, City Manager

ACKNOWLEDGEMENTS

STATE OF TEXAS COUNTY OF DALLAS	§ § §
This instrument was L. Holmes, Manager of Sky limited liability company.	acknowledged before me on
GIVEN UNDER M	Y HAND AND SEAL OF OFFICE, this the 174 day of 22.
	Meridita Ellen URL Notary Public, State of Texas
STATE OF TEXAS COUNTY OF DALLAS	§ § §
This instrument was a Wesley S. Pierson, City Man on behalf of the said municip	acknowledged before me on, 2022 by ager of the Town of Addison, Texas, a Texas home-rule municipality, ality.
GIVEN UNDER M	Y HAND AND SEAL OF OFFICE, this the day of 22.
Irma G. Parker Notary Public, State of Tex Comm. Expires 08-07-202. Notary ID 4770064	
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Exhibit 1 Legal Description of Addison Airport

The property platted pursuant to the Final Plat, Addison Airport, recorded as Instrument #200503420292 in Dallas County, Texas Official Public Records as depicted on the following two pages.



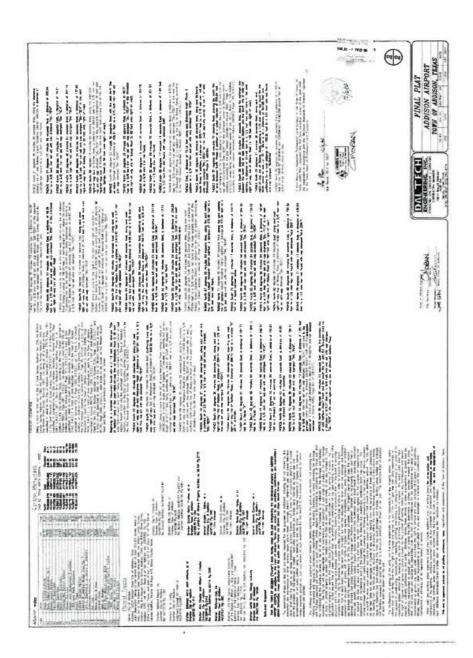


Exhibit 2
Property Survey of Demised Premises

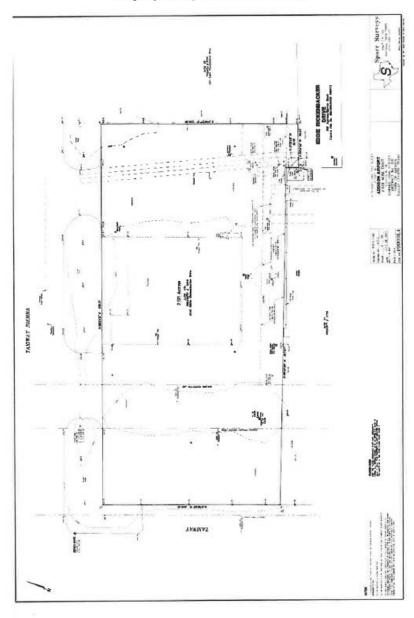


Exhibit 3 Legal Description of Demised Premises

ADDISON AIRPORT PROPERTY #0150 4485 Eddie Rickenbacker Drive, Addison, Texas

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 Deed Records of Dallas County, Texas (DRDCT), and being more particularly described as follows:

BEGINNING at a set one-inch brass disc stamped 'Sparr Surveys' at the northwest end of Eddie Rickenbacker Drive (50 foot wide ingress and egress easement recorded under Clerk's File No. 201400110455 DRDCT), said beginning point being an interior corner of Addison Airport Lease Property #0750;

THENCE North 21 degrees 58 minutes 08 seconds West, along the north line of said Addison Airport Lease Property #0750, 13.78 feet to a 'PK' nail set;

THENCE South 69 degrees 40 minutes 26 seconds West, continuing along the north line of said Addison Airport Lease Property #0750, 387.67 feet to a 'PK' nail set in the east line of a Taxiway;

THENCE North 21 degrees 16 minutes 29 seconds West, along the east line of said Taxiway, 204.55 feet to a 1/2-inch iron rod found in the south line of Taxiway Sierra;

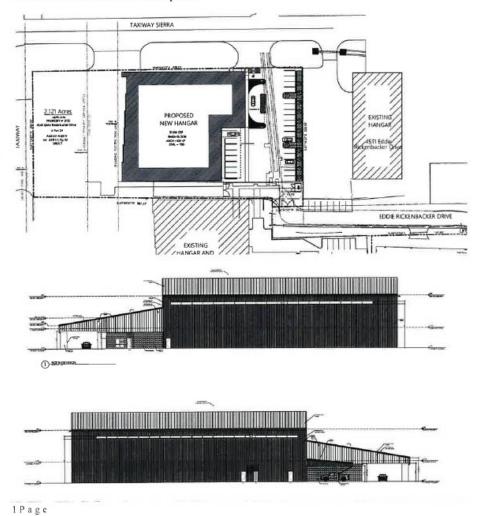
THENCE North 68 degrees 24 minutes 12 seconds East, along the south line of said Taxiway Sierra, 438.01 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the northwest corner of Addison Airport Lease Property #016A;

THENCE South 21 degrees 16 minutes 27 seconds East, along the west line of said Addison Airport Lease Property #016A, 226.58 feet to a set one-inch brass disc stamped 'Sparr Surveys' in the north line of said Eddie Rickenbacker Drive;

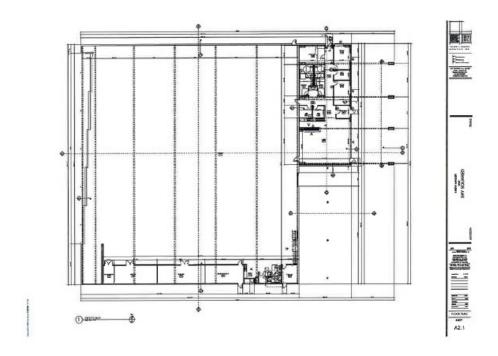
THENCE South 68 degrees 01 minutes 52 seconds West, along the north line of said Eddie Rickenbacker Drive, 50.22 feet to the **POINT of BEGINNING** and **CONTAINING** 2.121 acres of land.

Exhibit 4 Description of New Building Improvements and Approved Site Plan

The New Building Improvements shall generally include corporate aircraft hangar, aircraft ramp/apron, storage, vehicle ingress/parking, landscaping, exterior lighting, sign/graphics, fencing, utilities (including but not limited to gas, water, electricity, telephone, data) and automated fire suppression and alarm systems required by local code. It is expected the gross building area will be approximately 31,000 gross building square feet or more and will have minimal office/conference room space.



The New Building Improvements, including aircraft apron, are to optimize the utilization of the Demised Premises to, including but not less than that typical for Design Group III corporate jet aircraft (i.e. Gulfstream IV, V, VI) with a maximum hangar door height not to exceed 28' and a clear span of no less than 110' in the hangar, aircraft apron must meet or exceed Tenant's critical design weight but not less than 100,000 gross pounds of take-off weight.



This Exhibit 4 hereby includes by reference the complete set of Design Plans approved by the Town of Addison for the New Building Improvements including, but not limited to, all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

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Exhibit 5

Form of Irrevocable Standby Letter of Credit

[Lender Letterhead]	
, 202_	
Town of Addison, Texas	
C/o City Manager	
5300 Belt Line Road	
Dallas, Texas 75254	
Email: wpierson@addisontx.gov	
Dear Mr. Pierson:	
At the request of, we have establishe the enclosed Irrevocable Standby Letter of Credit #, in an a	d in your favor
the enclosed Irrevocable Standby Letter of Credit #, in an a	amount not to
exceed and/100 E	Oollars
exceed and/100 E (\$00).	
Please examine this instrument carefully. If you are unable to comply wi conditions, please communicate with the applicant to arrange for an ame	th the terms and ndment.
All drawings under this credit must be accompanied by the original Letter endorsement.	er of Credit for
If we can be of further assistance, please do not hesitate to call us at	
Sincerely,	
[LENDER]	
20	
By:	
Name:	
Title:	
Enclosure	
cc: [TENANT]	
1 Page	

[Lender Letterhead] IRREVOCABLE LETTER OF CREDIT # _____, 202_ Date: Beneficiary: Town of Addison, Texas C/o City Manager 5300 Belt Line Road Dallas, Texas 75254 Email: wpierson@addisontx.gov Applicant: [TENANT] Attention: Gentlemen: We hereby issue our Irrevocable Standby Letter of Credit #______ in favor of Beneficiary (as defined hereunder). This Letter of Credit is effective up to the aggregate amount of and No/100 Dollars (\$.00) available by draft drawn on Issuer at sight, marked "Drawn under Irrevocable Standby Letter of Credit " accompanied by the following: Beneficiary's written statement purportedly signed by its authorized representative 1. reading as follows: "The undersigned is authorized to make the following statement on behalf of Town of Addison, Texas ("Beneficiary"). Beneficiary hereby certifies that an event of default has occurred under that certain Lease Agreement dated , 20__, between Beneficiary and Applicant (the "Lease") with respect to the construction of the [New/Existing] Building Improvements, as defined therein, and that such default is ongoing. The amount of the draft presented represents the amount known by me to be required to complete construction of the [New/Existing] Building Improvements under the Lease." This original Letter of Credit and any amendments thereto (if any). In the event of a partial drawing the original Letter of Credit will be endorsed and returned to you unless the Letter of Credit has expired or the amount available is reduced to zero.

Town of Addison, Texas Resolution No.

Special Conditions:

- 1. Partial drawings are permitted under this Letter of Credit.
- Other than Beneficiary's statement required above, the Lender shall require no further substantiation of the occurrence of such an event of default, consent of Applicant, or proof of the necessity of the draw.
- 3. This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way by modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
- Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification.

We hereby engage with you that documents drawn under and in compliance with the term this Letter of Credit will be duly honored if presented for payment to [LENDER], at	s of
, Attention:, prior to 5:00 pm	on or
before, 202	
This Letter of Credit is subject to and governed by the Uniform Customs and Practice for Documentary credits of the International Chamber of Commerce (Publication 600, 2007 Revision).	
[LENDER]	
By:	
Name:	

Exhibit 6

Form of Memorandum of Lease

AFTER RECORDING RETURN TO:

Addison Airport Management c/o Real Estate Manager 4545 Jimmy Doolittle Road, Suite 200 Addison, Texas 75001

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of _______, 20___, and executed by and between the Town of Addison, Texas, a home-rule municipality ("Landlord") and ______, a (<u>state and type of entity formed</u>) ("Tenant").

WITNESSETH THAT:

In consideration of the premises and of the mutual covenants and agreements set forth in that certain Ground Lease Agreement dated as of ________, 20_____ (the "Ground Lease"), by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, a certain parcel of land located at and within Addison Airport ("Airport") that is more particularly described in Exhibit A attached hereto and made a part hereof, for a term of four hundred eighty (480) months following the Commencement Date (as defined in the Ground Lease), subject to all of the terms, provisions and conditions of the Ground Lease.

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

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

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed the day and year first above written.

IN WITNESS WHEREOF, the undersigned parties execute this Memorandum of Lease this day of, 20	
TENANT:	LANDLORD: TOWN OF ADDISON, TEXAS
By:, Manager	By:

EXHIBIT A

PROPERTY SURVEY AND LEGAL DESCRIPTION OF DEMISED PREMISES

Exhibit 7

Master Landlord Sublease Consent Form See Section 9.B

MASTER LANDLORD'S CONSENT TO SUBLEASE

Rider to Sublease Agreement

Name of Tenant as "Tenant"			
Primary Contact			
Legal Notice Address:			
Telephone:	Ground Le	ase No:	
E-mail Address:		Effective Date of Ground Lease:	
Sublease Agreement Date:	Commencement Date:	Expiration Date:	
Address of Subleased Premise	s:		
Address of Subleased Premise Describe Renewal Options (if a			
	pplicable):	tate" of Registration (if applic	
Describe Renewal Options (if a Subtenant Name:	pplicable):	tate" of Registration (if applic	
Describe Renewal Options (if a Subtenant Name: as "Subtenant"	pplicable):	tate" of Registration (if applic	
Subtenant Name: as "Subtenant" Entity Type	pplicable):		
Subtenant Name: as "Subtenant" Entity Type DBA:	pplicable):		
Subtenant Name: as "Subtenant" Entity Type DBA: Primary Contact:	pplicable): "Si		

ON-SITE CONTACT INFORMA	TION	
Name:	Title:	
Telephone:	E-mail	

EMERGENCY / AFTER HOURS CONTACT INFORMATION

Name:	Title:
Telephone:	E-mail

BASED AIRCRAFT REGISTRATION (use an additional sheet if needed)

N #	Make	Model	Year

(Underlined terms are defined as first given above)

The Town of Addison, Texas (the "Master Landlord") is the sole Landlord under that certain Ground Lease/Lease Agreement dated as of the Master Lease Effective Date wherein by way of any assignment, amendment, modification or other act, the above-named Tenant is the Tenant of the Ground Lease/Lease Agreement described above. Together with any and all assignments, modifications and amendments thereto, if any, the Ground Lease/Lease Agreement is hereinafter referred to as the "Master Lease," by the terms of which Tenant leased from Master Landlord certain property referred to as the "Demised Premises," "Leased Premises," or "Premises" (or such similar term) in the Master Lease (referred to herein as the "Demised Premises") located at Addison Airport within the Town of Addison, Texas, said property being more particularly described in said Master Lease. Tenant is hereby seeking Master Landlord's consent to the sublease ("Consent to Sublease") by Tenant of all or a part of the Demised Premises, which part is described in the Sublease, to the Subtenant so named above, pursuant to that Sublease Agreement described above (the "Sublease"), on the following terms and conditions:

Based on Tenant's representations, Master Landlord hereby consents to the Sublease on the following terms and conditions:

Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Master Lease including, without limitation, the duty to make any and all payments of rent. This Consent to Sublease shall in no way release Tenant from any of its covenants, agreements, liabilities and duties under the Master Lease. Upon written demand by Master Landlord, Tenant and/or Subtenant shall deliver a true and correct copy of the Sublease as it may be amended or modified from time to time. This Consent to Sublease does not constitute approval by Master Landlord of the terms of the Sublease. Nothing herein contained shall be deemed a waiver or release of any of the Master Landlord's rights under the Master Lease.

- 2. Subtenant's use and occupancy of the Demised Premises shall be subject to all of the terms and conditions of the Master Lease to the extent applicable, Subtenant agrees to be bound by the terms and provisions of the Master Lease and in the event of any conflict between the terms of the Master Lease and the terms of the Sublease, the terms of the Master Lease shall control (and, without limiting the foregoing, the Demised Premises shall never be used for any purpose other than as permitted by the Master Lease, and this Consent to Sublease does not constitute and is not consent to any use on or within the Demised Premises which is not permitted by the Master Lease).
- Subtenant shall be obligated to obtain Master Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Master Lease.
- 4. Tenant shall be fully liable for any violation by Subtenant of any of the terms and conditions of the Master Lease.
- 5. Master Landlord shall have no obligation for the performance by Tenant of its obligations under the Sublease. Neither this Consent to Sublease, the exercise by Master Landlord of its rights hereunder, nor the Sublease or any other instrument shall give Subtenant any rights directly or indirectly against Master Landlord or create or impose any obligation, duty, responsibility, or liability of Master Landlord in favor of or for the benefit of Subtenant.
- 6. In the event of the occurrence of an event of default under the Master Lease by Tenant while the Sublease is in effect, Master Landlord, in addition to any other rights or remedies provided in the Master Lease or by law, in equity, or otherwise, may at Master Landlord's option, collect directly from the Subtenant all rents becoming due under the Sublease and apply such rent against any sums due to Master Landlord. No direct collection by Master Landlord from Subtenant shall release Tenant from the payment or performance of Tenant's obligations under the Master Lease; provided that if Master Landlord collects any rents directly from Subtenant pursuant to this paragraph, Subtenant shall be released from its obligations to pay such rents to Tenant.
- 7. Tenant and Subtenant each hereby represent and warrant to Master Landlord that other than the Sublease, there are no agreements or understandings, whether written or oral between Tenant and Subtenant with respect to Subtenant's use and occupancy of the Demised Premises or any property of Tenant located therein.
- 8. Tenant and Subtenant each hereby covenants and agrees with Master Landlord that Tenant and Subtenant shall defend, indemnify and hold harmless Master Landlord, its elected officials, its officers, employees, representatives and agents from and against any and all claims, liabilities and obligations to any broker or agent in connection with the Sublease, including, without limitation, any reasonable attorneys' fees and costs incurred by Master Landlord in connection therewith.
- 9. If Subtenant is to operate as a commercial aeronautical service provider pursuant to the Sublease Agreement, Tenant hereby warrants and represents to Master Landlord that Tenant has delivered to Subtenant a complete copy of the prevailing Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers and the Addison Airport Rules and Regulations, each of which may be amended and, or modified by the Master Landlord from time to time, and Subtenant hereby acknowledges and warrants and represents to Master Landlord that Subtenant has received the same and shall comply with the requirements set forth therein.
- Tenant and Subtenant attest, warrant and represent to Master Landlord that all information given herein is true and correct.

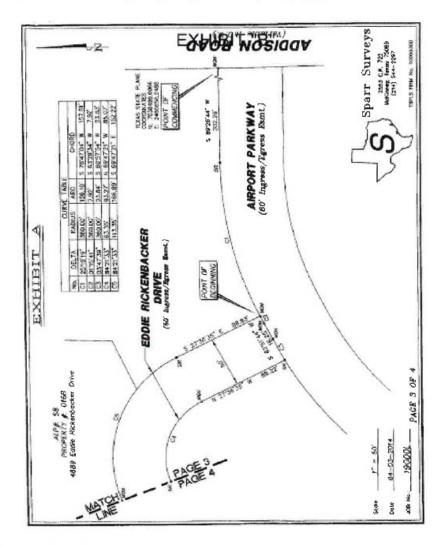
This Master Landlord's Consent to Sublease may be executed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement; the signatures of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile (e.g., telecopier, scanned PDF by email, or electronic signature) is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.

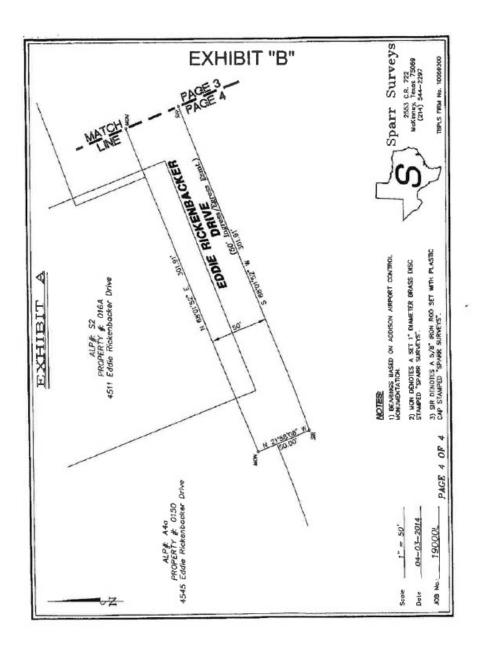
ACKNOWLEDGED AND AGREED TO this _ t0	day of,
Tenant:	Subtenant:
By:(Signature)	By:(Signature)
(Signature)	(Signature)
(Printed Name)	(Printed Name)
Title:	Title:
Date:	Date:
	Master Landlord Town of Addison, Texas
	By:
	Authorized Officer on Behalf of Master Landlord Date:

Exhibit 8

Description of Eddie Rickenbacker Drive

A Full and Complete Description of Eddie Rickenbacker Drive May Be Found in the Dallas County, Texas Official Property Records as Instrument #201400110455 Entitled "Notice of Modification of Means of Airport Ingress/egress Dated April 14, 2014.





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Exhibit 9

Landlord's Areas of Repair or Reconstruction of Common Area Infrastructure
(Pursuant to Lease Addendum #2.C)



LEASE ADDENDUM #1

Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices

Note: Capitalized terms used herein are the same as defined in the Lease or any Addendum attached and made a part of the Lease unless otherwise expressly provided for. This Lease Addendum #1 is made a part of and hereby incorporated into the Lease by reference.

I. Purpose: Pursuant to Section 11 (or elsewhere as provided for) of the Lease¹ the Tenant is required to maintain the Demised Premises and all improvements, fixtures, equipment and personal property thereto in "good repair and in a first class condition" and in accordance with all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison or any regulating agency with oversight of any or all portions of the Demised Premises throughout the Term as it may be extended or otherwise amended.

Additionally, Section 28 titled Title to Improvements provides that, among other things, Tenant shall own and hold title to any Buildings Improvements constructed on the Demised Premises by or for Tenant, shall be owned by Tenant for the duration of the Term, as the Term may be amended or modified. Upon the expiration or early termination of the Lease Term, the ownership of said Building Improvements, shall merge with the title of the Demised Premises and become the property of the Landlord. Landlord may, at Landlord's sole discretion, elect for Tenant to: (i) deliver to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance with these Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices together with all fixtures and equipment situated in the Demised Premises with reasonable wear and tear excepted; or (ii) upon written notice to tenant no later than sixty (60) months prior to the expiration of the Term, Landlord may elect to require Tenant to demolish and remove, or cause to be removed, any or all Building Improvements made to the Demised Premises, whether below, on or above the ground by Tenant or others, including, but not limited to, foundations, structures, buildings, utility lines, transformer vaults and all other service facilities constructed or installed upon the Demised Premises; and Tenant shall immediately restore, quit and peacefully surrender possession of the Demised Premises to Landlord and leave the land free of debris in a level, graded condition, with no excavations, holes, hollows, hills or humps. Tenant shall perform and complete such removal and restoration in a good and workmanlike manner, in accordance with all applicable ordinances, codes, rules and regulations within six (6) months of the expiration or termination of the Term. Such demolition and removal shall be performed at Tenant's sole cost and risk in accordance with all prevailing ordinances, codes, rules and regulations governing same.

Therefore, these <u>Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices</u> ("Maintenance Standards") hereby set forth in general the minimum level of standard of maintenance and repair or practice the Landlord expects of Tenant and Tenant (or any of its

¹ All capitalized terms used in these Tenant's Minimum Leasehold Maintenance Standards and Procedures are as used and defined in the underlying Lease unless otherwise defined herein.

successors and or assigns) agrees to be obliged in order to comply with the terms and conditions of the Lease.

- II. Governing Standard or Practice: Section 8.A. of the Lease states the Tenant agrees to comply with all laws, ordinances, rules, regulations, directives, permits, policies or standards of any governmental authority, entity, or agency affecting the use of the Demised Premises; and any "Construction/Maintenance Standards and Specifications" published by Landlord or its Airport Manager governing such matters at the Airport. Section 11.B. of the Lease states "Should there ever arise a conflict between the degree of standard or duty to practice any such standard or practice between [these Maintenance Standards] and any new construction and maintenance and repair standard so adopted by the Landlord, the standard and/or practice representing the higher or greater degree of standard and/or practice shall prevail as if such higher degree of standard and/or practice is incorporated into and made a part of these [Maintenance Standards].
- III. Terminology Used: Unless otherwise provided herein, the definition and/or the description of certain terms used or referred to below shall be the same as defined in the Lease or ASTM International Standard E2018-15² (as it may be amended or modified from time to time or its equivalence as generally accepted by the United States commercial real estate industry at the time).

For the purpose herein the standard of being in "good repair and in first-class condition" generally means when the building component or system is serving its designed function, is of working condition and operating well, shows evidence of being well taken care of and does not require immediate or short-term repairs above its de minimis threshold or does not evidence a material physical deficiency.

<u>Building System</u> – Interacting or independent components or assemblies, which form single integrated units that comprise a building and its site work, such as pavement and flatwork, structural frame, roofing, exterior walls, plumbing, HVAC, electrical, etc. (ASTM E2018-15).

 $\underline{\textit{Component}}$ – A portion of a building system, piece of equipment, or building element (ASTM E2018-15).

<u>Deferred Maintenance</u> – Physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property (ASTM E2018-15).

<u>Effective Age</u> – The estimated age of a building component that considers actual age as affected by maintenance history, location, weather conditions, and other factors. Effective Age may be more or less than actual age (ASTM E2018-15).

<u>Engineer</u>: Designation reserved by law for a person professionally qualified, examined, and licensed by the appropriate governmental board having jurisdiction, to perform engineering services (ASTM E2018-15).

² ASTM Designation E2018-15; November 2015ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken PA 19428-2929, United States

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<u>Expected Useful Life</u> – The average amount of time in years that an item, component or system is estimated to function without material repair when installed new and assuming routine maintenance is practiced (ASTM E2018-15).

<u>Fair Condition</u> – To be found in working condition but may require immediate or shortterm repairs above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

<u>Normal Wear and Tear</u> - Defined as deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the Tenant, by a guest or invitee of the Tenant (Section 93.006[b]); Chapter 93 of the Texas Property Code entitled "Commercial Tenancies"

<u>Physical Deficiency (ies)</u> – The presence of a conspicuous defect or defects and/or material deferred maintenance of a subject property's material systems, components, or equipment as observed. Specifically excludes deficiencies that may be remedied with routine maintenance, miscellaneous minor repairs, normal operating maintenance, etc. (ASTM E2018-15).

<u>Poor Condition</u> – Found not to be in working condition or requires immediate or short-term repairs substantially above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

<u>Routine Maintenance</u> - Repair that does not require specialized equipment, professional services, or licensed contractors but, rather can be corrected within the budget and skill set of typical property maintenance staff (ASTM E2018-15).

IV. Baseline Property Condition Assessment: Beginning on or about the tenth (10th) anniversary but no later than the twelfth (12th) anniversary of the Term, Tenant shall procure, at the sole cost of Tenant, a Property Condition Assessment baseline report (PCA) to be prepared, written and signed by a licensed professional engineer qualified to assess the condition of the Demised Premises and all Building Improvements, fixtures and equipment made a part thereto pursuant to the then-operative version of ASTM International Standard Designation E2018 as of the date the PCA is performed. If at that time, for any reason, ASTM International no longer publishes standards for conducting property condition assessments for commercial real estate in the United States, Landlord and Tenant shall mutually agree to adopt another similar standard of practice to be performed by qualified third parties recognized and accepted by the commercial real estate industry in the United States.

For any portion of the Demised Premises designed and constructed with the intent to be used for the storage and movement of aircraft, the PCA shall also include an aircraft pavement condition assessment performed for such areas in accordance with FAA Advisory Circular 150/5380-7A "Airport Pavement Management Program" and ASTM Standard Designation D5340 "Standard Test Method for Airport Pavement Condition Index Surveys" (or their respective operative standard in effect at the time of the PCA report date) (the "Pavement Standards"). If no such standard exists at the time, the pavement condition assessment shall be performed based on prevailing industry standards as of the date of the assessment.

- A. Within thirty (30) calendar days of the published date of the PCA report Tenant shall deliver to Landlord a complete signed original copy of the PCA report together with the aircraft payement condition assessment, if any, together with:
- (1.) "Tenant's Remedy Plan", a written plan prepared by Tenant itemizing and given in sufficient detail Tenant's plan to remedy and cure, at Tenant's sole cost and expense, any and all physical deficiencies and, or Deferred Maintenance matters identified and communicated in the PCA report. Tenant's Remedy Plan shall indicate, among other things, that all work will be completed in a good and workman like condition pursuant to all local building codes and ordinances as required by the Lease within one hundred and eighty (180) calendar days from the date of the PCA's published report date (the "Remedy Period") unless otherwise agreed to in writing by Landlord.
- (a.) If the pavement condition index (PCI), as defined in the Pavement Standards, reflects a score less than 70 (or its equivalence) the Tenant's Remedy Plan shall set forth in sufficient detail Tenant's intended remedy and cost estimate necessary to increase the aircraft pavement PCI score to a minimum of 70 within the Remedy Period.
- (b.) In the event the PCA recommends supplemental testing or evaluation of any building component including, but not limited to, structural, building envelope, roofing, HVAC, plumbing, electrical, fire alarm and suppression, elevator, hangar door and/or door operators, environmental, pavement and ADA, Tenant's Remedy Plan shall reflect Tenant's plan to complete such supplemental investigations as recommended within the Remedy Period.
- (2.) "Tenant's Facility Maintenance and Repair Plan" (or "Maintenance Plan") which sets forth in sufficient detail Tenant's stated itemized objectives to maintain and keep all building components and systems, pavement and landscaped areas in good condition and repair together with any planned capital repairs, including those cited in the PCA report and any capital improvements planned within the next ten (10) years following the PCA published report date. Additionally, the Maintenance Plan should include but not be limited to the following:
- (a.) Tenant's schedule and checklist for periodic self-inspection of all major building components and systems on annualized basis.
- (b) Tenant shall periodically update the Maintenance Plan to reflect scheduled repairs made together with itemized repair costs given, new conditions found as a result of Tenant's periodic self-inspections and Tenant's plan to maintain or repair said condition.
- **B.** If Tenant fails to deliver to Landlord a complete signed original Baseline PCA Report, Tenant's Remedy Plan and Tenant's Facility Maintenance and Repair Plan as required herein. Landlord may provide written notice thereof to Tenant. Tenant shall have sixty (60) business days after receipt of such notice to provide such report or plan. Tenant's failure to provide the documentation required herein shall be considered an event of default of the Lease. Tenant's failure to promptly remedy any physical deficiency (ies) identified and communicated in any PCA report as required herein is also considered an event of default under the Lease. In the event of such default(s), in addition to all other rights and remedies available to Landlord under the Lease and by law, Landlord may, but not be obligated to, cause such reports and plans to be prepared and implemented as deemed commercially reasonable; and all reasonable costs therefore expended by

Landlord plus interest thereon as provided for in Section 39 of the Lease shall be paid by Tenant upon demand.

- V. Requirement for Subsequent Baseline Property Condition Report Updates, Tenant Remedy Plan Updates and Tenant's Facility Maintenance and Repair Plan Updates:
- A. Upon each ten (10) year anniversary of the Term (but not later than two (2) years after each 10-year anniversary) Tenant shall procure, at its sole cost and expense, a PCA update (including aircraft pavement condition assessment) with the subsequent PCA report being of similar form and scope as the initial baseline PCA outlined above. Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) business days of the published date of the subsequent PCA report, Tenant shall deliver to Landlord a complete signed original of the subsequent PCA report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all physical deficiencies and/or Deferred Maintenance matters identified and communicated in the subsequent PCA report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the most recent subsequent PCA report findings and recommendations.
- B. With no less sixty (60) months remaining until the Lease Expiration Date, Landlord shall give written notice to Tenant whether to:
- 1. Procure, at Tenant's sole cost and expense, a final PCA report (including aircraft pavement condition assessment) with the final PCA report being of similar form and scope as the initial baseline PCA outlined above (the "Final PCA Report"). Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) business days of the published date of the Final PCA Report, Tenant shall deliver to Landlord a complete signed original of the Final PCA Report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the Final PCA Report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the Final PCA Report findings and recommendations. which are to be implemented through the Lease Expiration Date.

or,

- Plan for, prepare and implement the demolition and removal of the Building Improvements as set forth in <u>Section 28.C</u>. of the Lease.
- VI. Qualification of Property Condition Reviewer: The qualifications of a third-party consultant performing or overseeing the PCA shall be:
 - 1. Licensed in the state of Texas as a professional architecture or engineer;
 - Demonstrated experience working with general aviation type properties;

- Having working knowledge of relevant FAA Advisory Circulars and ASTM Standards relating to facility and pavement maintenance and survey standards affecting the subject property type and scope (size and complexity, etc.); and
- 4. Experience preparing property condition reports.

VII. Record Retention: Throughout the Term Tenant shall diligently gather and retain in an orderly manner all documentation affecting and relating to the Building Improvements and any fixtures or equipment made a part of the Demised Premises. To the extent possible the Tenant shall retain digital copies of all such documentation, which can be easily reviewed, inspected and sourced. All such documents are to be made available to each consultant assigned to perform the property condition assessment and pavement condition analyses.

Such documents to be retained should include but not be limited to:

- 1. Site plan updated as necessary.
- 2. Property Survey updated as necessary to reflect any changes to the leased premises.
- 3. Construction and "as-built" drawings together with written building specifications.
- 4. Certificate of Occupancy and building permits.
- 5. Building Owner's Manual received from the General Contractor.
- 6. Pavement Condition Assessment Reports (aircraft apron and other).
- 7. Insurance casualty claims and adjustment reports affecting the Building Improvements.
- 8. Description of future/planned material improvement or repairs.
- Outstanding notices and citations for building, fire, and zoning code and ADA violations.
- Previously prepared, if any, Property Condition Assessment reports or engineering testing and surveys pertaining to any aspect of the subject property's physical condition.
- Lease listing literature, listing for sale, marketing/promotional literature such as photographs, descriptive information, reduced floor plans, etc.
- 12. Periodic inspection reports (self or third-party) and supporting documentation.
- 13. Irrigation plans updated as needed.
- 14. Operating manuals, instructions, parts lists.

VIII. Reversionary Process (at Lease Expiration or Early Termination): Provided Landlord has not already given written notice to Tenant that Landlord has elected to require Tenant to demolish and remove any or all of the Building Improvements from the Demised Premises as set forth in Section 28.C of the Lease; pursuant to the terms and conditions of the Lease, unless otherwise amended or modified the Lease is due to expire at the end of the Lease Expiration Date at which time any and all Building Improvements and any subsequent improvements and alterations made thereto as defined in the Lease revert and become under the ownership of the Landlord. If Tenant is not then in default of the Lease, Tenant shall have the right to remove all

personal property and trade fixtures owned by the Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal, which work shall be conducted in a good and workmanlike manner and at Tenant's sole cost and expense.

Accordingly, in order to facilitate an orderly transfer of all the ownership interests of the Demised Premises, Tenant shall deliver or cause to be delivered to Landlord all of the following on or before the Expiration Date, or earlier termination of the Lease:

Tenant's Representations: Tenant shall certify and attest in writing, in a form acceptable to Landlord:

- Tenant conveys to Landlord in good and indefeasible title all the Building Improvements
 free and clear of any and all liens, assessments, security interests and other monetary
 encumbrances; and
- There are no lessees or sub-lessees in possession of any portion of the Building Improvements, tenants at sufferance or trespassers; and
- 3. There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Building Improvements, and all obligations of Tenant arising from the ownership and operation of the Demised Premises and any business operated on the Building Improvements including but not limited to taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid before the Expiration Date; and
- There is no pending or threatened litigation, condemnation, or assessment affecting the Building Improvements; and
- Tenant has disclosed to Landlord any and all known conditions of a material nature with respect to the Building Improvements which may affect the health or safety of any occupant of the Demised Premises; and
- 6. Except as otherwise disclosed in writing by Tenant to Landlord, the Building Improvements do not contain, to Tenant's actual knowledge, any known Hazardous Materials other than lawful quantities properly stored in containers in compliance with applicable laws. For the purpose herein, "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, or any other federal, state or local environmental law, ordinance, rule, or regulation, whether existing or subsequently enacted during the Term; and
- 7. Any Rent and monies due under the Lease unless paid in full; and
- A Bill of Sale conveying personal property remaining or left on the Demised Premises, if any, free and clear of liens, security interest and encumbrances; and
- All plans, drawings and specifications respecting the Building Improvements, including as-built plans and specifications, landscape plans, building system plans (HVAC, Telecom/Data, Security System, plumbing) air-conditioning in Tenant's possession or control; and

- 10. Inventory with corresponding descriptions and identification of all keys, lock combinations, access codes and other such devices or means to access every securable portion, compartment, cabinet, panel, closet, gate or point of entry within the Demised Premises; and
- 11. All soil reports, engineering and architectural studies, grading plans, topographical maps, feasibility studies and similar information in Tenant's possession or control relating to the Demised Premises; and.
- 12. A list and complete copies of all current service contracts, maintenance contracts, management contracts, warranties, licenses, permits, operating agreements, reciprocal easement agreements, maps, if any, applicable to the Demised Premises, certificate of occupancy, building inspection approvals and covenants, and conditions and restrictions respecting the Demised Premises; and
- 13. Copies of all utility bills (electric, water/sewer and gas) and similar records respecting the Building Improvements for the past three (3) months; and
- 14. A schedule of all service contracts, agreements and other documents not expressly referenced herein relating to the Demised Premises.

~End~

LEASE ADDENDUM #2

CONSTRUCTION OF NEW BUILDING IMPROVEMENTS

Note: Capitalized terms used herein are the same as defined in the Lease or any Addendum other attached and made a part of the Lease unless otherwise expressly provided for. This Lease Addendum #2 is made a part of and hereby incorporated into the Lease by reference.

A. New Building Improvements.

- 1. As a condition for Landlord to lease the Demised Premises to Tenant pursuant to the terms and conditions of this Lease, Tenant shall construct or cause to be constructed on the Demised Premises, at Tenant's sole cost, expense and risk, certain buildings and other improvements more fully described in Exhibit 4 of the Lease, which is incorporated herein by reference (the "New Building Improvements").
 - a. The New Building Improvements are to be constructed in accordance with plans and specifications prepared by a state licensed architect and/or engineer retained by Tenant (the "Design Plan"), which said Design Plan shall be submitted to Landlord for approval evidenced by the issuance of a building permit necessary to construct the New Building Improvements. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility. Landlord agrees its approval of the Design Plan shall not be unreasonably withheld, conditioned or delayed.
 - b. Tenant shall bear all cost and expense of the demolition and removal of any Existing Improvements on, or in the Demised Premises in accordance with the Design Plan.
 - c. The construction cost or value (separate and apart from the cost of design) of the New Building Improvements shall exceed Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "Construction Value"), and Tenant shall submit to Landlord upon request all commercially reasonable evidence of such Construction Value in a form acceptable to Landlord (the "Construction Value Evidence"). For purposes hereof, reasonable evidence of Construction Value would be satisfied by the American Institute of Architects (AIA) G702 Application for Payment certified by the Tenant, owner, architect or engineer and, Tenant's general contractor to be true and correct to their best knowledge.
 - d. If Tenant fails to submit the Design Plan to the Landlord for application of a building permit to construct the New Building Improvements within six (6) full

calendar months following the Effective Date of the Lease then such failure shall constitute a default of the Lease by Tenant, whereupon Landlord may, among its other remedies and at its sole discretion, terminate this Lease by giving written notice to Tenant pursuant to the Pre-Construction Termination provision in subparagraph "f" below.

- e. Construction of the New Building Improvements shall commence within One Hundred Twenty (120) calendar days after Landlord gives its approval of the Design Plans and Tenant obtains all pre-construction permits and approvals as described in subsection f. below. If the Construction Commencement Date does not occur within twenty-four (24) calendar months after the Effective Date then such failure shall constitute an Event of Default, subject to notice and cure pursuant to Section 23. In the event Landlord terminates the Lease pursuant to Section 24, the Lease shall be and become null and void and, except for the obligation to pay any accrued but unpaid Rent, any provisions of this Lease regarding the condition of the Demised Premises (including all improvements thereon) upon the expiration or termination of this Lease, and any provisions of this Lease regarding any obligations or provisions that survive the Lease expiration or termination (including obligations regarding indemnity and environmental matters), neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant, if any, any deposits made by Tenant within five (5) business days following such termination.
- f. The Construction Commencement Date shall be deemed to have occurred after each of the following events has occurred:("Construction Commencement Date"):
 - (i) Approval of the Design Plan by Landlord which shall not be unreasonably conditioned, delayed or withheld;
 - (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the New Building Improvements on the Demised Premises;
 - (iii) Tenant shall have received (and shall have provided a true and correct copy to the Landlord) the FAA's determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration;
 - (iv) Execution of a contract with a qualified general contractor, proof of required insurance and, the Letter of Credit as required under sub-paragraph B, below, and
 - (v) The initiation of actual mobilization of construction equipment on the Demised Premises; and
 - (vi) Tenant has delivered to Landlord written notice confirming that each of the foregoing items has occurred in a form reasonably satisfactory to Landlord.
- 2. Any architect or engineer of Tenant shall be duly licensed to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to

promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and Tenant SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE "DAMAGES"), INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES), OR CONDUCT BY THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, OR THE VIOLATION OF ANY TERM OF THE LEASE WITHOUT LIMITATION. HOWEVER, TO THE EXTENT GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT ARE ALLEGED SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE INDEMNIFIED PARTIES. TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PARTIES' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. LIKEWISE, TENANT'S LIABILITY FOR THE INDEMNIFIED PARTIES' DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PARTIES' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO THE STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out in accordance with the plans and specifications for the finish-out of the New Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord, such approval not to be unreasonably withheld, delayed or conditioned.

- 3. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.
- After the Construction Commencement Date, Tenant shall complete construction of the New Building Improvements with reasonable diligence, without material

deviation from the Design Plan, and any material deviation from the Design Plan shall be subject to the review and approval of Landlord. If (i) construction of the New Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection 9 below) on or before twenty-four (24) full calendar months after the Construction Commencement Date (the "Substantial Completion Date") [save and except for force majeure as described in Section 42.B. and provided, further, if construction of the New Building Improvements is seventy-five percent (75%) or more complete based on Construction Value (i.e., if the costs incurred and paid by Tenant to construct the New Building Improvements equals or exceeds \$3,375,000.00) as of the Substantial Completion Date as substantiated by Construction Value Evidence presented by Tenant to Landlord, then the Substantial Completion Date shall be extended for up to an additional six (6) months so long as Tenant is diligently and continuously pursuing completion of construction], or if construction of the New Building Improvements is not Finally Complete ("Final Completion" being defined in subsection 9 below) no later than ninety (90) days after the Substantial Completion Date (save and except for force majeure as described in Section 42.B. and the extension of the Substantial Completion Date as aforesaid) then:

Landlord shall have the right to give written notice to Tenant either of the following:

- a. Tenant shall pay Landlord One Hundred Dollars (\$100.00) as additional Rent for each and every day thereafter until such completion is achieved. Such additional Rent shall be invoiced by Landlord in arrears monthly which said amount shall become due and payable by Tenant within ten (10) days following Tenant's date of receipt of said invoice; and
- b. Landlord may terminate this Lease by providing written notice to Tenant and the same shall become null and void and, except for the obligation to pay any accrued but unpaid Rent, any provisions of this Lease regarding the condition of the Demised Premises (including all improvements thereon) upon the expiration or termination of this Lease, and any provisions of this Lease regarding any obligations or provisions that survive the Lease expiration or termination (including obligations regarding indemnity and environmental matters), neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant any deposits made by Tenant within five (5) business days following such termination and Tenant shall at Landlord's request remove any portion of the New Building Improvements requested by Landlord and the applicable provisions of Section 28.C., below, shall apply to such removal.
- c. If at Final Completion, the Construction Value fails to equal or exceed Four Million Five Hundred Thousand Dollars (\$4,500,00.00), for each and every One-hundred Twelve Thousand and Five Hundred Dollars (\$112,500.00) shortfall in total Construction Value, the Term shall be reduced by eighteen months of Term (for example, if the total Construction Value totals \$4,000,000 or \$500,000 less than the contractual amount, the term shall be reduced by 33 calendar months [\$500,000/\$112,500 = 4.44 x 24 calendar months = 107 months rounded to the nearest whole calendar month] for a total adjusted Term of 373 calendar months or, 31 years and 1 month.). In such event, the parties shall execute a short form Memorandum of Lease substantially in the form of Exhibit 6 to be recorded in the Dallas County Official Public Records affirming the true and correct Term as hereby adjusted.

- 5. Tenant agrees that any construction or modification of the Building Improvements or any other improvements which may be authorized in writing by Landlord on or within the Demised Premises shall be performed in strict compliance with all Laws. Tenant recognizes that construction/maintenance standards and specifications, the Town of Addison's building and related codes and zoning requirements, and all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.
- 6. With respect to Title III of the Americans With Disabilities Act of 1990, Tenant acknowledges and agrees it shall remain fully responsible and obligated over the Term to construct, alter and maintain the Building Improvements in accordance with the prevailing ADA Act. Furthermore, Tenant shall ensure no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, retaliation or genetic information, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the ADA Act. Tenant shall give Landlord written notice within ten (10) days of Tenant having knowledge or written notice of any ADA Act violation or claim of violation from any governmental entity with authority on such matters or from any third party.
- 7. Tenant will properly and timely submit to the FAA the TxDOT, and any other governmental authority, entity or agency having jurisdiction regarding the Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over the Airport.
- 8. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises and all parts thereof, during normal business hours, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises. Landlord shall coordinate access with Tenant's designated personnel prior to a site visit. Tenant reserves the right to deny access to Landlord if OSHA safety requirements aren't followed.
- 9. "Substantial Completion of the New Building Improvements" or "Substantial Completion" shall be deemed to have occurred upon the issuance by Landlord of a certificate of temporary or final occupancy for any portion of the New Building Improvements, if required. "Final Completion" of the construction of the New Building Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Building

Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the New Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.

B. Construction Insurance, Performance and Performance Bond or Irrevocable, Stand-by Letter of Credit:

In addition to the applicable insurance requirements set forth in Section 13 of the Lease:

- During any period of construction, Tenant or Tenant's General Contractor shall obtain and keep in full force and effect a Builder's Risk Completed Value policy with an all-risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse vandalism, malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$10,000 or deductibles imposed by carrier due to state market conditions.
- Tenant shall cause to be issued in favor of Landlord, at Tenant's sole cost and expense, and kept in full force and effect at all times during any period of construction, an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs (the "Letter of Credit"), such Letter of Credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements and Tenant has not cured the event of default after being given notice and a reasonable opportunity to cure as provided in this Lease. The form of such Letter of Credit is attached hereto and incorporated herein as Exhibit 5. Tenant shall cause the original executed Letter of Credit to be delivered to Landlord not later than the Construction Commencement Date. Upon written approval by Landlord on not less than ten (10) business days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the Letter of Credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Tenant during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord. After the completion of the Building Improvements contemplated by this Lease, in the event that Tenant subsequently requests the commencement of additional construction or improvements in an amount equal to or greater than Five Hundred Thousand Dollars (\$500,000), then Tenant shall provide Landlord a Payment Bond and Performance Bond or Letter of Credit in the same manner as articulated in this subparagraph.

C. Landlord's Repair or Reconstruction of Common Area Infrastructure

As a condition for Tenant to lease the Demised Premises from Landlord and to construct the New Building Improvements pursuant to the terms and conditions of this Lease Addendum #2 and the Lease, Landlord shall construct or cause to be reconstructed certain airport common area infrastructure at its sole cost, expense and risk as provided as follows:

- 1. Eddie Rickenbacker Drive: as described in the Notice of Modification of Airport Ingress/Egress attached hereto and incorporated herein as Exhibit 8 (recorded in the Official Public Records of Dallas County, Texas as Instrument #201400110455) shall serve as the "landside" means of ingress/egress to the Demised Premises. The eastern portion of Eddie Rickenbacker Drive is of a concrete paved surface with formed curbing on each side, regarded to be typical for improved streets at the airport ("Airport Street Standard"). However, the western portion of Eddie Rickenbacker, being a length approximately 270 feet, is constructed of a combination of poured in place concrete panels and asphalt pavement regarded to need replacement ("Old Street Section") where graphically depicted in Exhibit 9 attached hereto and incorporated herein by reference. Landlord hereby agrees and obligates itself to reconstruct or cause the reconstruction and, or repair of the Old Street Section to meet or exceed the Airport Street Standard which, in good faith, Landlord shall cause to be completed within one-year of Tenant's Final Completion Date, subject to force majeure.
- Airport Service Vehicle Road Segment: the Airport Service Vehicle Road ("Service Road") is a common area vehicle roadway maintained by the Airport, which serves as the primary road for on-airport vehicle traffic and fuel trucks. It parallels much of the length of Taxiway Alpha, which runs north and south on the eastside of the Airport. The Airport is in the process of reconstructing much of the entire length of the Airport's eastside Service Road in phases while continuing to facilitate daily vehicle airport traffic. Landlord hereby agrees and obligates itself to reconstruct or cause the reconstruction and, or repair at its sole cost and expense that segment of the Airport Service Vehicle Road directly fronting and adjacent to Tenant's entire west boundary of its Demised Premises up to where the Service Road joins the Taxiway Alpha and Sierra intersection ("Sky Square Service Road") where graphically depicted in Exhibit 9 attached hereto and incorporated by reference. It is Landlord's intent, to the extent possible to: (i) reconstruct the Sky Square Service Road as a twenty-five (25) foot wide two-lane roadway (ii) at a construction standard consistent with the rest of the Airport's Service Road reconstruction initiative, and (iii) to be professionally engineered and constructed to properly join and abut Sky Square's aircraft apron consistent with industry standards. The Parties agree to work together and cooperate during the design and construction of the Sky Square Service Road. Subject to force majeure, Landlord agrees to complete the reconstruction of the Sky Square Service Road no later than eighteen (18) months following Tenant's Construction Commencement Date (it being Landlord's intent to have the Sky

Service Road complete in advance of Tenant's Substantial Completion Date and use of the hangar facility).

- 3. <u>Developer's Participation Agreement</u>: Landlord and Tenant hereby agree to consider the advantages and mutual benefits of entering in to a separate Developer's Participation Agreement pursuant to Section 212.071 Subchapter C (*Developer Participation in Contract for Public Improvements*) of the Texas Local Government Code ("Code") whereby the Tenant would construct or cause to reconstruct one or both of the two above described common area infrastructure repair sites depicted in <u>Exhibit 9</u>, and the City would participate in the cost of repair or reconstruction pursuant to the Code and as set forth therein.
- D. Except for C.3. above, failure of the Parties to observe and comply with the requirements of this <u>Lease Addendum #2</u>, subject to notice and cure as provided in <u>Section 23</u> of the Lease, shall be an Event of Default.

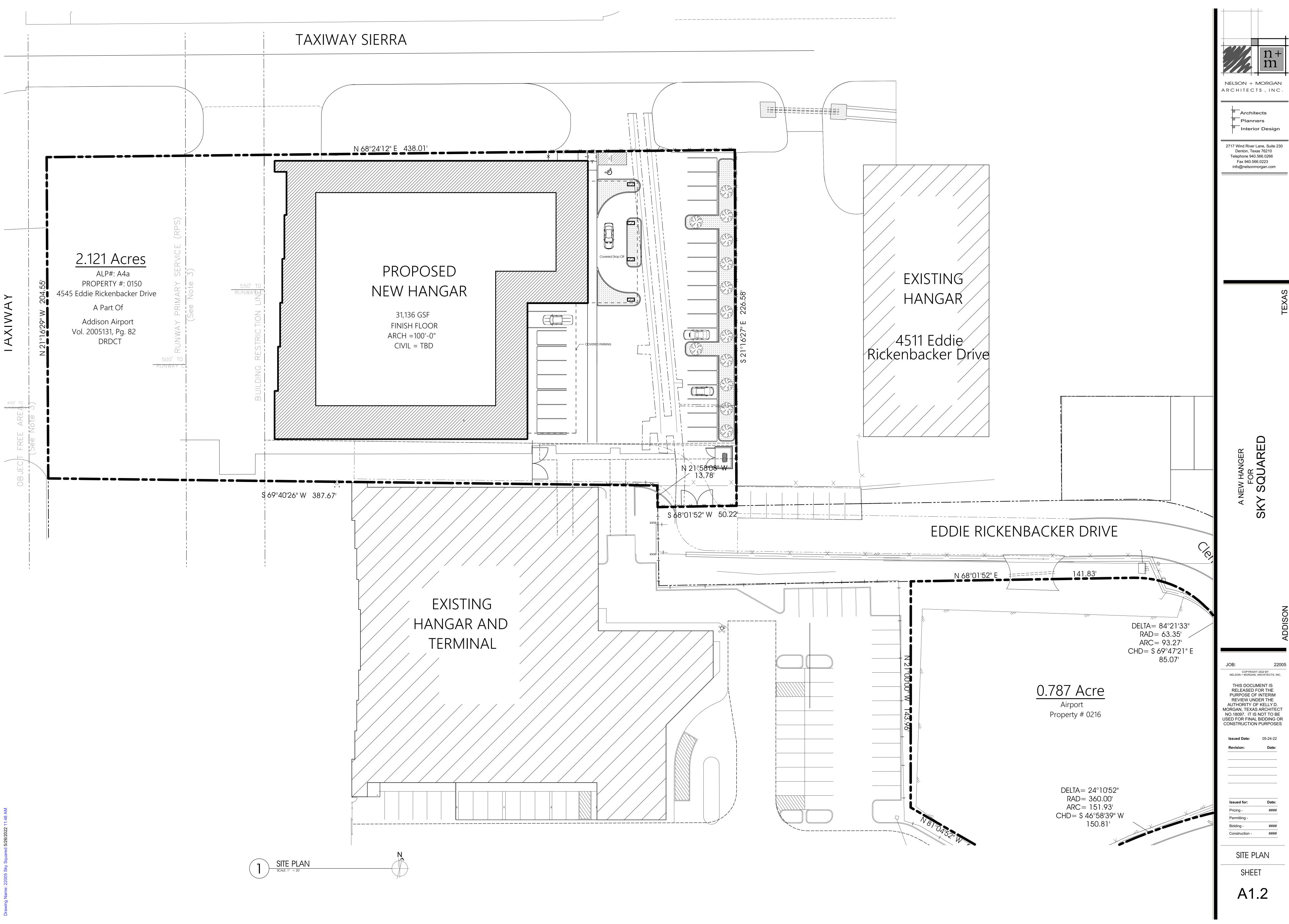
~ End~

Proposed Ground Lease with Sky Square, LLC (affiliate to Sky B&B, LLC)

Location: 4485 Eddie Rickenbacker







ARCHITECTS , INC.

Architects Planners

Interior Design Telephone 940.566.0266

2717 Wind River Lane, Suite 230 Denton, Texas 76210 Fax 940.566.0223 info@nelsonmorgan.com

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MORGAN, TEXAS ARCHITECT
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FLOOR PLAN

A2.1

2717 Wind River Lane, Suite 230 Denton, Texas 76210 Telephone 940.566.0266 Fax 940.566.0223 info@nelsonmorgan.com

EXAS

SKY SQUARED

JOB: 22005

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Issued Date: 05-24-22

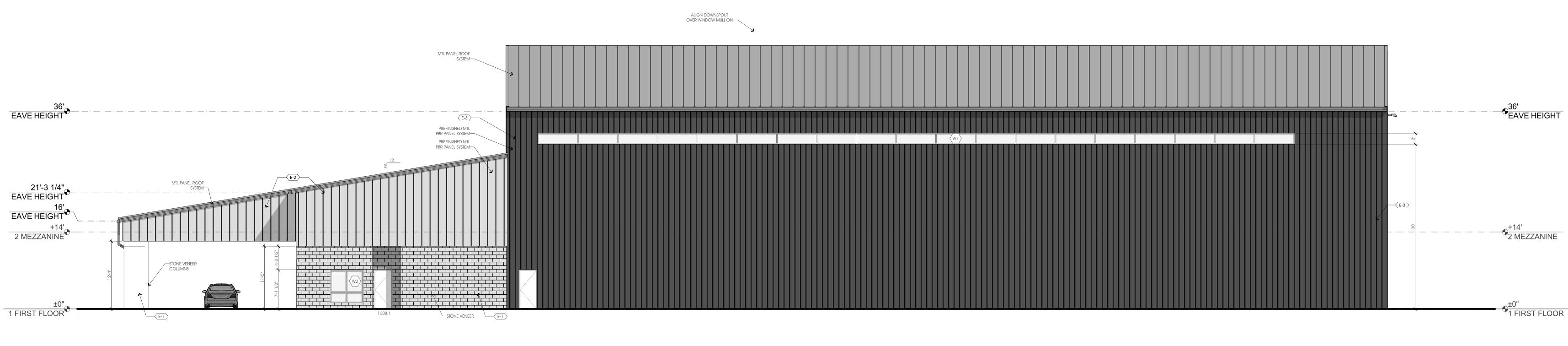
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Issued for: Date:
Pricing - ####

Permitting
Bidding - ####

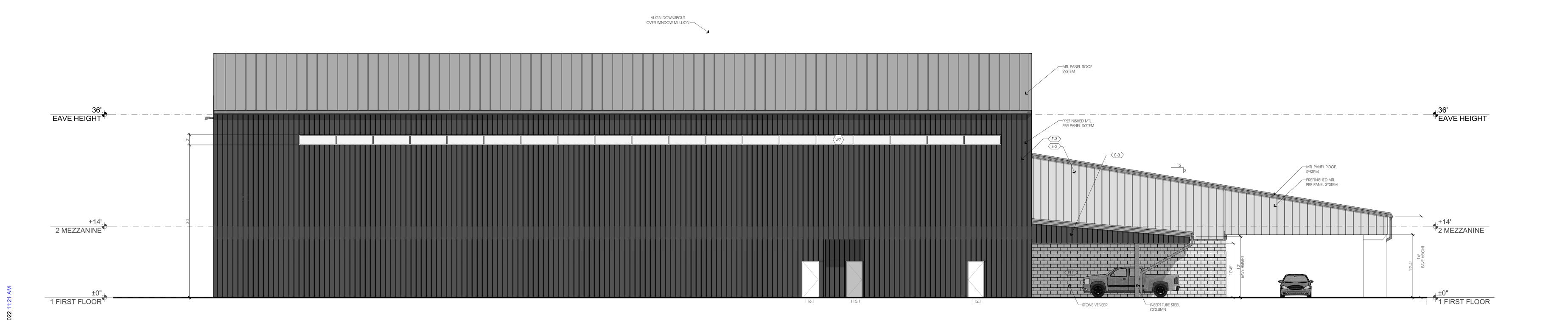
EXTERIOR ELEVATIONS SHEET

A3.1



NORTH ELEVATION

SCALE: 1/8" = 1'-0"



2717 Wind River Lane, Suite 230
Denton, Texas 76210
Telephone 940.566.0266
Fax 940.566.0223
info@nelsonmorgan.com

SAX

A NEW HANGER FOR SKY SOLIARED

JOB: 22005

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Issued Date: 05-24-22

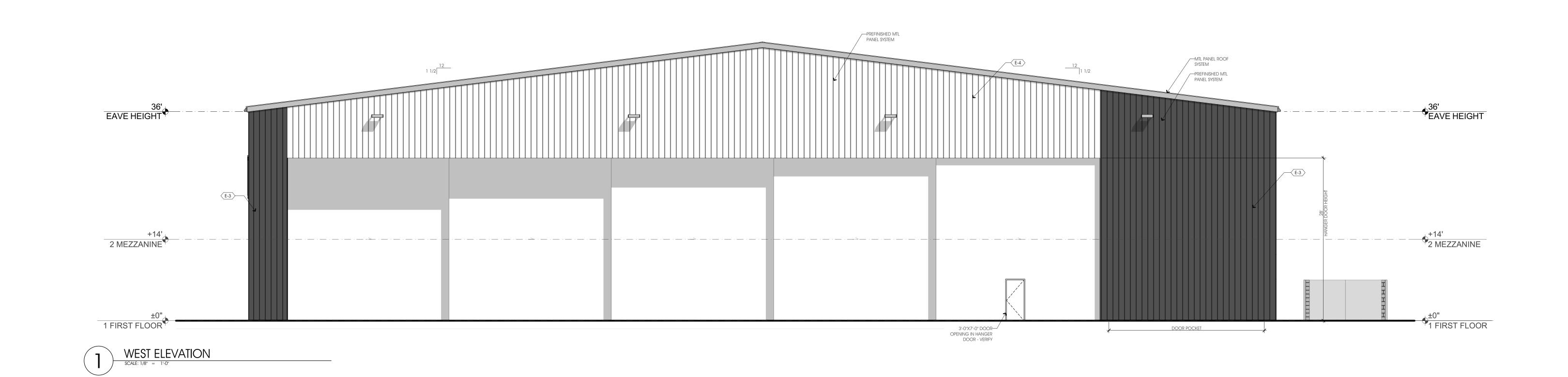
Revision: Date:

Pricing - ###

Permitting
Bidding - ###

EXTERIOR ELEVATIONS

A3.2





2 EAST ELEVATION

SCALE: 1/8" = 1'-0"

Sky Square, LLC Summary of Salient Ground Lease Terms

- 1. **Tenant:** Sky Square, LLC, a Texas limited liability company.
- 2. **Leased/Demised Premises:** Airport land consisting of approximately 2.12-acres (92,347 gross square feet) located at 4485 Eddie Rickenbacker Drive at the Airport.
- 3. **Lease Commencement Date**: Being the earlier of the date Substantial Completion is achieved or the 48th full calendar month after the Effective Date.
- 4. **Term**: 40-years (480 months).
- 5. **Base Rent**: Annual Rent \$66,521 payable in twelve equal monthly installments over the term, or \$5,543.46 per month.
- Adjustment of Rent Beginning with the second anniversary of the Commencement Date, the Base Rent is subject to a biennial adjustment over the Term tied to the percentage of change in the Department of Labor's local Consumer Price Index.

7. Permitted and Restricted Use of Premises:

A. Permitted Uses - Same as Sky B&B, limited generally to FAA Part 135 aircraft charter management, corporate flight operations, aircraft storage, office administration in support of aeronautical operations.

B. Restricted Uses -

- i. No third-party aircraft maintenance, brokerage, flight school and retail services.
- ii. Generally, all other standard use restrictions apply.

8. Building Improvements and Construction of New Improvements:

- A. Existing Building Improvements Lease Addendum #2
 - i. Tenant responsible for demolition of existing conditions as required by Design Plan at its sole costs, expense and risk.
- B. New Building Improvements <u>Lease Addendum #3</u>
 - i. Minimum Construction Value (separate from design costs) \$4.5M.
 - ii. Design Plan to be delivered w/in 6 mos. of Effective Date or LL may terminate Lease.
 - iii. Construction to commence w/in 120 following Design Plan approval (issuance of Building Permits). If construction does not commence within 24-months after the Effective Date, LL may terminate Lease subject to cure provisions.
 - iv. Substantial Completion is to be w/in 24 months of Construction Start Date.

- a. If construction of New Building Improvements is 75% or more complete, Substantial Completion Date is to be extended additional 6 months.
- b. Substantial Completion Delay Penalty is \$100/day until achieved.
- v. Final Completion Date is 90 days following Substantial Completion.
- vi. Use of Letter of Credit as construction security in amount of 100% of construction costs during periods of construction.
- C. Future Building Improvements must have Landlord's prior written consent, like New Building Improvements.
- D. Landlord's Obligation for Certain Airport Infrastructure Repairs or Replacement:
 - i. **Eddie Rickenbacker Drive**: Landlord, at its sole cost and expense, is to reconstruct approximately 270 feet of Eddie Rickenbacker Drive, which is to be completed within 1-year of Tenant's Final Completion Date.
 - ii. Airport Service Vehicle Road Segment: Landlord, at its sole cost and expense, is to reconstruct, that portion of the Airport Vehicle Service Road directly fronting and adjacent to Tenant's entire west boundary of the Demised Premises up to where the Service Road joins the Taxiway Alpha and Sierra intersection. Said reconstruction shall be completed within 18 months of Tenant's Construction Commencement Date.
 - iii. <u>Developer's Participation Agreement</u>: Landlord and Tenant agree to consider but not obligated to execute a Developer's Participation Agreement pursuant to Section 212.071 Subchapter C of the Texas Local Government Code ("Code") whereby the Tenant would construct or cause to reconstruct one or both of the two above-described common area infrastructure repair and the City would participate in the cost of repair or reconstruction pursuant to the Code.
- 9. Assignment, Subletting & Leasehold Mortgage of Leasehold.
 - A. Assignment: Tenant has right to assign to an entity it may merge or consolidate with or, which is a parent or subsidiary of Tenant.
 - B. Subletting: Right to sublet subject to terms of Master Landlord Sublease Consent Rider (Exhibit 7)
 - C. Mortgaging of Leasehold: consistent with city lease standards. Tenant does not intend to require a Leasehold Mortgagee at this time.
- 10. **Property Tax and Assessments** As in Sky B&B Leased, if Tenant conveys title of building improvements to LL and DCAD thereafter assess ad valorem property taxes, Landlord will credit rent or reimburse Tenant of city portion of property tax assessed. This provision continues for the first 10-years from when the City Tax is first levied.
- 11. **Maintenance and Repair of Demised Premises:** Lease standard provisions including Lease Addendum #1 Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices.

- 12. **Title to all Building Improvements:** Tenant shall own all existing and future building improvements made to the premises for the duration of Term
 - A. Ownership reverts to the Town at end of Term;
 - B. Delivery of the improvements at end of Term per Lease Addendum #1;
- 13. All other terms and conditions are consistent with Town's current lease standards.

Regarding Sky B&B Ground Lease: Separate Letter Agreement between Town and Sky B&B to amend Sky B&B Ground Lease as follows:

- A. Delete Section 54 Notice of Proposal
- B. Add Lease Addendum #1 Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices
- C. Should the actual total Construction Value evidenced by Tenant exceed the total Construction Value of \$4.5M, for every \$112,500 in excess of the stipulated Construction Value, the Sky B&B Ground Lease shall be amended to extend the remaining Term one additional year, not to exceed 480 full calendar months.

Council Meeting 13.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Excellence in Transportation Systems

Milestones: Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action on a Resolution Approving a Ground Lease Between the Town of Addison and AQRD Hangar Management LLC for Commercial Aviation Use on Approximately 1.57 Acres of Improved Land Located at the Addison Airport and Authorizing the City Manager to Execute the Ground Lease.

BACKGROUND:

AQRD Hangar Management LLC, a Texas limited liability company, desires to acquire certain city-owned (or soon to be city-owned) properties located at 4582 and 4584 Claire Chennault Drive at Addison Airport, subject to a long-term lease arrangement (Ground Lease) subject to the Town's consent.

AQRD Hangar Management LLC (Tenant) is an affiliate of Aerospace Quality Research and Development (AQRD), a special purpose entity created to hold the leasehold interests created by the proposed Ground Lease and title to the existing building improvements. AQRD, an aerospace engineering firm and PART 135 repair station, also owns the leasehold interests located at 4600 Claire Chennault Drive and at 4400 Westgrove Drive. The building improvements subject to the Ground Lease, will greatly facilitate AQRD's expected growth and expansion with their neighboring 4600 Claire Chennault facility.

Pursuant to the terms of the Ground Lease, the Tenant will pay initial rent in the sum amount \$635,000 as a one-time single installment, fully earned and non-refundable, on or before taking possession of the existing building improvements. Additionally, the Tenant will pay on or before the Commencement Date \$51,188 in annual rental payable in twelve (12) equal monthly installments subject to biennial adjustments over the lease term. The initial lease term is sixty (60) full-calendar months form the Commencement Date. The Tenant has the option to extend the lease term to June 30, 2057 (30+ additional years) provided the Tenant satisfactorily completes a minimum of \$1 million in building capital repairs and renovations before the expiration of the initial lease term.

The Tenant's permitted use of the lease premises includes sale of aircraft and

aircraft parts, aircraft maintenance and repair, aircraft storage, aircraft training, aircraft charter, and aircraft rentals, which is the same for 4600 Claire Chennault.

The proposed redevelopment represents an estimated \$51,188 in annual real-estate revenue (ground rent) to the Airport. This equates to approximately \$2.4 million over the 34-year lease term.

Overview of Estimated Economic Impact				
Ground Rent	\$51,188	\$.75/SFL; 1.57 acres (68,250 SFL)		
Fuel Flowage Fees (FFF)		N/A		
Projected Business Property Tax		N/A		
Ad Valorem Tax	\$12,300	\$2M @ \$.61466/mil		
Total Annual Economic Benefit	\$63,488			
Net Cashflow Over Term	\$2,412,000	Ground Rent & Fuel Flowage Fees		
Net Present Value @ 6% disc.	\$864,000			
Initial Rent Installment	\$635,000			
Tenant's Capital Investment	\$1,000,000	Minimum Required Investment		

The proposed redevelopment and lease arrangement supports the Town's objectives for the Airport by enhancing the overall value of the Airport with new and improved aeronautical facilities, increased revenue, and an enhanced tax base. The proposed redevelopment and use of the facilities are consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

The city attorney has reviewed the Ground Lease and other related documents, finding the same acceptable for the Town's purposes.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - AQRD
Resolution - AQRD Ground Lease June 2022
Location Map
Summary of Lease Terms

Proposed Ground Lease

AQRD Hangar Management, LLC

June 28, 2022



Request for Consideration and Action

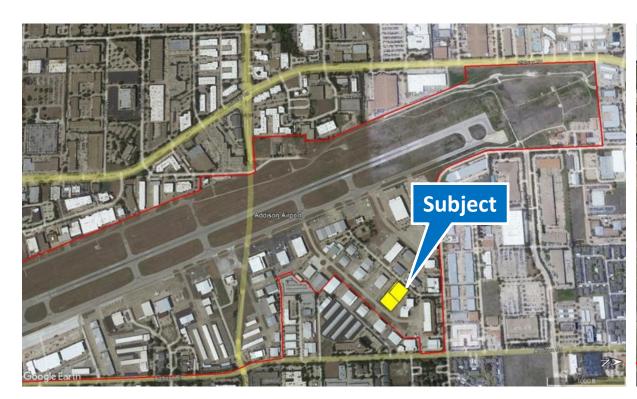


AQRD Hangar Management LLC (AQRD) proposes to acquire certain city-owned (or soon to be city-owned) properties located at 4582 and 4584 Claire Chennault Drive at Addison Airport subject to a long-term Ground Lease subject to the Town's consent.

- To facilitate company growth and expansion with campus-like setting.
- Lease Premises is 1.57 acres of airport land improved with two existing hangar structures.
- Initial Lease Term is five (5) years.
- Option to Extend Term: If AQRD completes \$1 million in building renovations and capital repairs within first five (5) years, AQRD is entitled to extended term to June 30, 2057 (30+ years).
- Permitted Use: Sale of aircraft and aircraft parts, aircraft maintenance and repair, aircraft storage, aircraft training, aircraft charter, and aircraft rentals.
- Initial Rent: \$635,000 upon acceptance of the Leased Premises; fully earned and non-refundable.
- Annual Base Rent: \$51,188 payable in twelve (12) monthly installments of \$4,265.63 subject to biennial adjustment over the Term.

Subject Location







Aerospace Quality Research and Development (AQRD), an aerospace engineering firm and PART 135 repair station, also owns ground leased facilities at 4600 Claire Chennault Drive and 4400 Westgrove Drive.

4582 Claire Chennault: "Hartman Hangar" Ground Lease" expired 2/27/2022; Hartman continues occupancy until 6/30/2022

4584 Claire Chennault: "Mills Hangar" Ground Lease expires 6/27/2022; AQRD currently sub-tenant.

Economic Impact



Overview of Economic Impact				
Annual Ground Rent	\$51,188	\$.75 per SFL; 1.57 acres (68,251 SFL)		
Projected Annual Business	\$0.00	No based aircraft assumed		
Property Tax (Aircraft)				
Projected Ad valorem	\$12,300	\$2 million @ \$.61466/mil		
Leasehold Tax		(DCAD est. TOA rate)		
Annual Fuel Flowage Fee		Not available		
Total Annual Economic	\$63,488			
Benefit				
Net Cashflow over Lease	\$2,412,000			
Term	Ψ2,412,000			
Net Present Value (NPV) of	\$864,000			
Cashflow (disc. @ 6%)	\$804,000			
Initial Rent Installment	\$635,000	Reversion value for building		
	\$055,000	improvements		
Tenant's Capital Investment	\$1,000,000	Minimum capital investment		

Conclusion & Recommendation



The AQRD Hangar Management, LLC Ground Lease Proposal Achieves:

Council's Strategic Pillars

Innovation in Entrepreneurship & Business

- Milestone #3: Leverage the use of the Airport to maximize business growth and expansion.
- In February 2022, the Town awarded a \$70,000 Section 380 Economic Incentive Grant for AQRD's expansion.

Town's objectives for the Airport

- Enhances overall value of the Airport with new development
- Increases revenue
- Enhances tax base
- Consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

No Action Required At This Time.



QUESTIONS?

DESOI	UTION NO.	
KESUL	JULIUN NU.	

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A GROUND LEASE BETWEEN THE TOWN OF ADDISON, TEXAS AND AQRD HANGAR MANAGEMENT LLC FOR COMMERCIAL AVIATION USE ON APPROXIMATELY 1.575 ACRES OF IMPROVED LAND LOCATED AT THE ADDISON AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GROUND LEASE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Ground Lease between the Town of Addison and Addison Hangars Management, LLC, a Texas limited liability company, for commercial aviation use on approximately 1.57 acres of improved land located at the Addison Airport, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Ground Lease.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of JUNE 2022.

	TOWN OF ADDISON, TEXAS	
	Joe Chow, Mayor	
ATTEST:		
Irma Parker, City Secretary		

EXHIBIT A

STATE OF TEXAS §

COUNTY OF DALLAS §

Summary of Exhibits

- Exhibit 1: Legal Description of Addison Airport
- Exhibit 2- Property Survey
- Exhibit 3-Legal Description of Demised Premises
- Exhibit 4: Description of New Building Improvments
- Exhibit 5: Memorandum of Lease
- Exhibit 6: Form of Irrevocable Standby Letter of Credit
- Lease Addendum #1- Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices
- Lease Addendum #2-Construction of New Building Improvements

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("<u>Lease</u>") is made and entered into as of ______, 2022 (the "<u>Effective Date</u>"), by and among the <u>Town of Addison, Texas</u>, a Texas home-rule municipality (hereinafter sometimes referred to as "<u>Landlord</u>"), and <u>AQRD Hangar Management LLC</u>, a (Texas limited liability company) (hereinafter referred to as "<u>Tenant</u>") (Landlord and Tenant are sometimes referred to herein together as the "<u>Parties</u>").

WITNESSETH:

WHEREAS, the Landlord is the record title owner of the Addison Airport, a description of which is set forth in <u>Exhibit 1</u> attached hereto and incorporated herein (the "<u>Airport</u>"); and

WHEREAS, the Airport is operated and managed by the Landlord or by any person or entity authorized by Landlord from time to time to manage and or operate the Airport on behalf of the Landlord (severally and/or collectively hereinafter referred to as "Airport Manager" or "Manager"); and

WHEREAS, the Town of Addison, as a home-rule municipality, operates under a municipal charter that has been adopted or amended as authorized by Article XI_Section 5, of the Texas Constitution. The Town of Addison, as a municipality, from time to time establishes and enforces federal, state and local ordinances, codes and regulations, which in doing so is acting in its governmental capacity, which may be the same or separate as its capacity as Landlord and Manager provided for herein; and

WHEREAS, Tenant desires to lease from the Landlord, and the Landlord desires to lease to Tenant, a portion of the Airport generally described and hereinafter referred to as that certain parcel of improved and unimproved land consisting of approximately 1.57 acres (approximately 68,250 gross square feet) located at what is commonly known as 4582 and 4584 Claire Chennault Drive, as shown on Exhibit 2 and being more particularly described on Exhibit 3, each attached hereto and incorporated herein (collectively the "Property Survey"), together with the non-exclusive right to use the Common Facilities as defined in Section 17 hereinbelow (which parcel is referred to herein as the "Demised Premises") according to the terms and conditions set forth in this Agreement. The Property Survey, which is mutually agreed to and accepted by the Parties, was prepared by a licensed surveyor in the state of Texas and provides a legal description by metes and bounds and establishes the gross square feet of land area contained within the Demised Premises used as the multiplier to calculate Base Rent identified in Section 3 hereinbelow;

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Town of Addison, Texas Resolution No.

WHEREAS, the Hartman Ground Lease and Mills Ground Lease were each subject to that certain Reciprocal Easement Agreement dated June 28, 1983, recorded in Volume 83139, Page 1576 of the Deed of Records of Dallas County, Texas and also recorded in Volume 83248, Page 4110 of the Deed Records of Dallas County, Texas (the "REA"). The REA was amended by that First Amendment to Reciprocal Easement Agreement dated December 19, 2011 as filed and recorded as Instrument #201100333707 in the OPR.

WHEREAS, immediately upon the expiration of the Hartman Ground Lease and the Mills Ground Lease, pursuant to the terms of said agreements, the ownership and title to any and all improvements on the respective demised premises became the sole property of Landlord, giving Landlord the exclusive right to sell, pledge, encumber, license, transfer or otherwise convey all said improvements made to the land.

WHEREAS, Landlord, in its sole and absolute discretion, terminated the REA, as amended or modified, as evidenced by that certain Memorandum of Easement Termination filed and recorded in the OPR as Instrument # dated , 2022.

WHEREAS, it has long been held by Landlord that 4582 and 4584 Claire Chennault are best served to be operated at all times under the same tenant/operator to mitigate inherent vehicle, pedestrian, and aircraft ingress and egress conflicts. It is hereby the sole intent by Landlord, by way of this Lease, to make these two parcels inseverable (e.g. by way of assignment at some later date) other than at Landlord's sole and absolute discretion and consent.

WHEREAS, Landlord, in its sole and absolute discretion, hereby merges the demised premises of the Hartman Ground Lease and the Mills Ground Lease together and hereby replaces them in their entirety with the description of the Demised Premises as given above.

WHEREAS, the Demised Premises has been improved with two existing metal clad over steel frame conventional aircraft hangars with split-level office and shop space attached (each building approximately 13,540 building square feet²) together with approximately 24,150 square feet of dedicasted concrete aircraft apron, and 20,130 square feet of off-street covered parking with concrete vehicle driveway access (the "Existing Building Improvements").

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¹ The premises may be sub-leased to multiple sub-tenants provided they are all made subject to <u>Section 9</u> of this Lease. It is the intent for the two parcels to remain under the same operational control at all times.

² Per Dallas Appraisal Central District; 2022

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

In consideration of and subject to the terms, covenants and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation) whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances, the Rules and Regulations, and the Minimum Standards, now existing or as hereafter agreed to, adopted or imposed, (ii) all restrictive covenants affecting the Demised Premises, (iii) all restrictions, easements, and other encumbrances on or matters affecting the Demised Premises, whether of record or not or which could be revealed by a survey of the Demised Premises, and (iv) and all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust or monetary liens affecting the Demised Premises which are not filed of record.

Section 2. Preliminary Period, Due Diligence Period, and Term:

- A. Preliminary Period: The period of time beginning upon the Effective Date of this Lease and ending upon the Commencement Date is herein referred to as the "Preliminary Period". Any entry upon and/or use or occupancy of the Demised Premises by Tenant during the Preliminary Period shall be subject to all of the terms and conditions of this Lease.
- B. Due Diligence Period: Commencing on the Effective Date of this Lease and ending the last day of the third calendar month following the Effective Date of this Lease (the "<u>Due Diligence Period</u>"), Tenant shall be allowed to perform such due diligence as necessary to assess, evaluate or to obtain basic information about the Demised Premises and, or about the Existing Building Improvements thereon including, but not limited to, the following:
 - 1. The environmental condition of (and any hazardous materials present thereon) the Demised Premises, including the Existing Building Improvements thereon and the necessary remediation, if any, of the same, as provided for in Paragraph 22 Environmental (for the avoidance of doubt, the due diligence shall include the Landlord providing the Tenant with copies of or access to any and all environmental studies including but not limited to Environmental Site Assessments conducted on the Demised Premises or adjacent parcels to which the Landlord has in its possession as of the Effective Date);
 - 2. The fees, expenses, and tax obligations that will be assessed on the improvements resulting from the proposed redevelopment and capital improvements made to the Demised Premises from all local, state, or federal taxing authorities or other governmental or regulatory agencies;

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- 3. Identifying the necessary permits, approvals, waivers and their related costs required by any governing authorities, including, but not limited to, the Town of Addison, Dallas County, the State of Texas, the Federal Aviation Association (FAA), and the Texas Department of Transportation (TxDOT), for the completion of the project contemplated herein;
- **4.** Estimates for the necessary demolition and removal of, in whole or in part, the Existing Building Improvements and any related remediation efforts to prepare the site for redevelopment.
- 5. The Landlord may request, and Tenant shall timely remit to the Landlord such documentation and information deemed necessary and appropriate by the Landlord for it to make a determination as to Tenant and its guarantors, if any, creditworthiness, financial condition, organizational structure and governance suitability and capacity to perform under the terms and conditions of the Lease.
- 6. If either party is dissatisfied with the outcome of its due diligence or is unable to obtain the necessary information regarding one or more of the items listed in this sub-paragraph B, that party shall have the right to give the other party written notice describing sufficiently the deficiency and give the other party five (5) business days to either remedy the condition or give in writing a statement how they intend to timely remedy the condition. Notwithstanding the foregoing, either party may disaffirm this Lease by giving written notice to the other party on or before the expiration of the Due Diligence Period, in which case the Lease shall become null and void *ab inito* with no further obligation borne by either party to the other.

C. Term:

- 1. Base Term: Provided neither party disaffirms the Lease pursuant to Section 2.B above and all other provisions of this Lease, the term hereof shall commence on the first day of the first calendar month following the expiration of the Due Diligence Period (the "Commencement Date"), and shall end the last day of the sixtieth (60th) calendar month following the Commencement Date (the "Base Term").
- 2. Extended Term Option: Provided Tenant (i) is not then in default beyond the expiration of applicable notice and cure periods under this Lease or any other agreement with Landlord, (ii) achieves Final Completion, and (iii) exceeds the stipulated Construction Value for the New Building Improvements as set forth and required in Lease Addendum #2 (attached hereto and incorporated herein by reference) on or before the expiration of the Base Term above, the Base Term shall be extended so that this Lease will end June 30th, 2057 ("Extended Base Period"). Should Tenant earn and qualify for the Extended Base Period, the Parties hereby mutually agree to execute and record a Memorandum of Lease substantially in the form of Exhibit 5 attached hereto this Lease and incorporated herein by reference, memorializing the Extended Base Term being in effect. Should Tenant fail to complete the New Building Improvements as required pursuant to Lease Addendum #2, Tenant shall not be entitled to this Extended Term causing the Base Term to remain unchanged except for as adjusted, if any, pursuant to Section 4 Adjustment of Rent.

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D. Notwithstanding the foregoing, it is the intent of the Parties to this Agreement <u>not</u> to allow the Term, including the Extended Term Option, to exceed the maximum statutory limit of forty (40) consecutive full-calendar years from the Commencement Date.

Section 3. Rental

- A. Subject to adjustment as hereinbelow provided, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, Rental each month over the Term for the Demised Premises as set forth below:
 - 1. Initial Rent Payment: Provided neither Landlord or Tenant terminate this Lease on or before the expiration of the Due Diligence Period pursuant to Section 2.B.6, above, it shall be deemed Tenant accepts the Demised Premises together with the Existing Building Improvements pursuant to Section 7 below. Accordingly, within five days following the expiration of the Due Diligence Period, Tenant shall pay or cause Landlord to be paid a one-time installment of Rental for the sum amount of Six Hundered Thirty-Five Thousand Dollars and no cents (\$635,000.00 US) ("Initial Rent Payment") due and payable to the Addison Airport on behalf of Landlord in ACH funds or cashier's check, which such Initial Rent Payment shall be deemed fully earned and non-refundable except as otherwise provided for herein; and
 - 2. Base Rent: Tenant agrees to and shall pay Landlord annual Rental for the Demised Premises in the amount of Fifty-One Thousand, One Hundred and Eighty-Seven Dollars and 50/100. (\$51,187.50) (Note: Base Rent is calculated at \$0.75 per gross square foot located within the Demised Premises as determined by the Survey accepted by the parties) which amount shall be paid by Tenant in twelve equal monthly installments in advance on the first day of each calendar month (the "Base Rent", which shall be adjusted as set forth herein). The first monthly payment or installment of Base Rent in the amount of Four Thousand, Two Hundred and Sixty-Five Dollars and 63/100 (\$4,265.63) is due and payable on or before the Commencement Date. Thereafter, another payment or installment of the Base Rent, subject to adjustment as set forth below, shall be due and payable on the first day of each calendar month during the term hereof. All Rent is due on the first of each month and is delinquent after the 10th day of each month and subject to the provisions of Section 23 and Section 39.
 - 3. If the Demised Premises is amended or modified and the gross square feet is increased or decreased, the Base Rent shall be recalculated using the prevailing Base Rental Rate subject to adjustment as provided for in Section 4.
 - 4. In the event the Commencement Date is a date other than the first day of a calendar month, the monthly Base Rent determined in for any partial month at the beginning of the Term shall equal the product of the Base Rent multiplied by a fraction, the numerator of which is the number of days in the partial month (beginning with the Commencement Date and ending with the last day of the partial month) and the denominator of which is the number of days in such full calendar month. Payment of Base Rent for any fractional calendar month at the end of the Term shall be similarly prorated.

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- 5. For purposes of this Lease, the term "Rent" means the Initial Rent Payment, Base Rent, additional rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for non-payment of Base Rent.
- B. Security Deposit: No Security Deposit required.

Section 4. Adjustment of Rental:

- A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly Rental due under Section 3.A.1. (Base Rent) shall be adjusted as follows:
 - 1. Annual Rent (including Base Rent) shall be adjusted to reflect changes in the Consumers' Price Index All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("<u>Basic Index</u>") is the Consumer Price Index existing as of the Commencement Date. The current index ("<u>Current Index</u>") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.
 - 2. Beginning with the first full month following the then applicable Adjustment Date, the annual Rent (including the Base Rent) shall be adjusted so that it equals the product of the annual Rent (including the Base Rent) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the "Adjusted Rental"), but in no event shall such annual Rent (including the Base Rent) ever be decreased below the Base Rent set forth in Section 3.A.2., above.
 - 3. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

Section 5. Permitted Use and Prohibited or Restricted Use of the Demised Premises:

- A. Permitted Uses: The Demised Premises mayh be used and occupied by Tenant only for the following uses:
 - 1. Constructing, owning and operating an aeronautical facility used in connection with the sale of aircraft and aircraft parts; aircraft maintenance and repair, repair of aircraft parts; aircraft storage; aircraft training; aircraft charter, aircraft rentals; and
 - 2. Office or administrative space used in support of said aeronautical operations or services;

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- B. Prohibited or Restricted Use of Demised Premises: The following uses are expressly prohibited or restricted:
 - Ground transportation for rent or hire (including taxi and limousine service);
 - Retail services including food sales; barber and valet services, alcoholic beverage sales, sales of pilot supplies; newsstands and gifts;
 - Aircraft fueling operations without valid license or permit issued by Landlord;
 - 4. Any use that would conflict with the FAA policy on the Non-Aeronautical Use of Airport Hangars as may be amended or modified (FR/Vol. 81, No. 115, June 15, 2016; 14 CFR Chapter 1 [Docket No. FAA 2014-0463]).
 - 5. For any illegal purpose or any other activity (federal, state, county and municipal laws, rules, regulations, standards and policies) that, in Landlord's reasonable opinion, would create a nuisance, unreasonably disturb other tenants of the Airport, or which may cause an increase in Landlord's insurance costs, whether or not such increased costs are actually incurred; and
 - Aviation fueling operations of any kind without a valid fuel dispensing permit issued by the Town of Addison.
 - 7. The Tenant shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations of the Building Improvements to the Demised Premises, all such repairs and alterations to be diligently pursued to completion.
 - 8. Tenant acknowledges that Landlord is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to knowingly take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.
 - 9. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that to the extent that the Demised Premises are used for commercial purposes that (i) no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (iii) that the Tenant shall use

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the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

10. To the extent the Demised Premises is used for commercial purposes, Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Section 6. Construction of Building Improvements:

In connection with the use and occupancy of the Demised Premises by Tenant, Tenant will cause to be constructed on the Demised Premises throughout the Term, buildings and other improvements at Tenant's sole cost, expense and risk including but not limited to the New Building Improvements referenced in Section 2.C.2 above and more specifically provided for in Lease Addendum #2 attached hereto and incorporated herein by reference. For purposes herein, the term "Building Improvements" shall mean, without limitation the Existing Building Improvements, as defined in the Preamble of this Lease made on or to the Demised Premises as of the Effective Date, the New Building Improvements as defined in Lease Addendum #2, and any other Future Building and Other Improvements (as defined in Lease Addendum #2) made to, constructed, installed, located or placed upon the Demised Premises during the Term, as the Term may be extended or modified. Except as provided for by this Lease (including Lease Addendum #2, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

Section 7. Acceptance of Demised Premises:

TENANT WILL ACKNOWLEDGE THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO

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ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN (OR WILL BE) ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.E. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in <u>Section 32</u>, below.

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

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, 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) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all

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governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (Airport Manager may be changed or modified by the City, and for purposes of this Lease, the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/ Leasehold Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the Design Plan.

B. Tenant shall comply with all noise abatement standards at the Airport at all times, shall notify any employee, guest or invitee of Tenant, including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

Section 9. Assignment, Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:

A. Assignment:

1. Without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole and absolute discretion and opinion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise, (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) nor sublet (except as provided for in Section 9 B below) in whole or in part any portion of the Demised Premises, and 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 Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each

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such transferee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and 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. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.

- 2. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations under this Lease.
- For purposes hereof, an assignment will be deemed to occur if the person or persons who own 3. or have control of more than 50% of Tenant on the Effective Date of this First Amendment to Ground Lease cease to own or have control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or inter vivos, of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A "Permitted Transferee" for purposes of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above, and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an "assignment" hereunder. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership and/or control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

B. Subletting:

- Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting aircraft storage only, provided that each sublease is evidenced by written agreement, signed and executed by Tenant and sublessee and fairly states:
 - a. Each sublessee agrees to be bound by the terms and provisions of the Lease, including the provisions of Section 5 and Section 18 regarding the Airport's Governing Documents, to the extent such extends to a sublease; and

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- b. In the event of any conflict between the terms of the Lease and the terms of the sublease, the terms of the Lease shall control; and
- c. Such subletting shall not constitute a novation of the Lease; and
- d. Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease; and
- e. Any such sublease term shall not extend beyond the Term of this Lease, as this Lease may be amended or modified; and
- f. Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease; and
- g. With occurrence of an Event of Default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder.
- Neither this consent, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.
- 3. Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any violation of any terms and conditions of this Lease by a sublessee may constitute an Event of Default, subject to notice and cure as provided in Section 23 of this Lease.
- 4. Upon request by Landlord, Tenant shall provide to Landlord within five (5) business days of receipt of each request a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes an Event of Default, subject to notice and cure, as provided in Section 23 of this Lease.

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C. Mortgaging of Leasehold Estate:

- 1. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the New Building Improvements described in Lease Addendum #2, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the Rent due hereunder and otherwise fully perform the terms and conditions of this Lease.
- 2. Any Mortgage affecting Tenant's leasehold estate shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said Mortgage.
- 3. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.
- 4. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee performs all of the obligations of Tenant hereunder, provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee or its successors and assigns after foreclosure or transfer in lieu of foreclosure shall not and does not have the right and shall not and does not have the power to assign (as defined in subsection A. of this Section above) this Lease, or any

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right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgage of such proposed leasehold mortgagee.

Section 10. Property Taxes and Assessments:

Following the Commencement Date, Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to effect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense. Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof. Notwithstanding the foregoing. Tenant shall not contest the determination that the buildings and/or improvements are subject to taxation. If a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the Rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

Section 11. Maintenance and Repair of Demised Premises:

A. Tenant shall, throughout the Term hereof, maintain in good repair and in a first-class condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas) all the Demised

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Premises and all buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised Premises.

B. Notwithstanding the foregoing, set forth as "Lease Addendum #1" attached hereto and incorporated herein by reference and made a part hereof, are "Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices," which are intended as maintenance and repair standards and practices Landlord expects of Tenant. Tenant (and any of its successors or assigns) hereby agrees to meet or exceed the Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices throughout the Term. Notwithstanding the foregoing, as provided in Section 18 below, Landlord reserves the right, in its sole discretion, to introduce and adopt other regulations deemed appropriate and necessary by Landlord for the purpose, among other things, protection of the property of Landlord. In the event Landlord should formally adopt similar leasehold maintenance and repair standards governing such practices of all ground leaseholds at Addison Airport ("Replacement Maintenance Standards"), such encompassing regulations and practices shall supersede and replace Lease Addendum #1 in its entirety upon the effective date of such Replacement Maintenance Standards for the duration of the Term.

Section 12. Alterations, Additions and Improvements:

After completion of the New Building Improvements described in Lease Addendum #2, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises or any improvements thereon or modifications thereto without the prior written consent of Landlord or Manager. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord or Manager. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and requirements set out above, and in Lease Addendum #2 and Section 8, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in Lease Addendum #2).

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Section 13. Insurance and Bonds:

- A. At all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:
 - 1. Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.
 - 2. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
 - 3. Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.
 - 4. If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.
 - 5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
 - 6. Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to

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a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

- 7. Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.
- 8. Business Automobile Liability insurance for all Tenant-owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000 for bodily injury and property damage.
- 9. If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by the City, Tenant shall maintain a minimum of \$1,000,000 in Pollution Liability Insurance coverage, which may be satisfied through sudden and accidental pollution coverage under Tenant's commercial general liability policy.
- 10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.
- B. Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:
 - The Town of Addison, Texas, and the Airport Manager and their respective past and
 present officials, officers, employees and agents shall be named as additional insureds, or
 loss payees as the case may be, except with respect to the professional liability policies and
 workers compensation insurance;
 - 2. All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance;
 - 3. A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;
 - 4. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten [10] days.);

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- 5. All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages;
- 6. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;
- 7. Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and
- 8. Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:
 - 1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and
 - 2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.
- **D**. In connection with any construction on the Demised Premises, <u>Lease</u> <u>Addendum #2</u> shall govern.
- E. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord,

Section 14. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.
- B. In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on

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or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6 (including Lease Addendum #2), 8, and 13 hereof.

- C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with Sections 6 and 21 hereof and other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.
- **D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ["Net Insurance Proceeds"]) shall be applied as follows:
 - 1. Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
 - 2. Upon receipt by Landlord of the certificate and opinion required by the foregoing clauses (i) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.
- E. In the event Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same shall be an Event of Default by Tenant pursuant to notice and cure in Section 23.B of this Lease. Landlord shall have the right, but not the obligation, to commence or complete Restoration as described hereinafter. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant

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diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

F. In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the Term of this Lease. All insurance proceeds, if any are remaining and/or available subject to another secured interest on the property, shall be paid to the Landlord.

Section 15. Condemnation:

- A. If during the Term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the Demised 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 Demised 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, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The Rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the Demised Premises.
- C. If this Lease is not terminated pursuant to Section 15.A., above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to Section 15.A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

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Section 16. Utilities.

Tenant shall be responsible, at Tenant's sole cost and expense, for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the Term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities.

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 Demised Premises, other Airport installations, and all other reasonable services which may be provided with or 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, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

Section 18. Airport Governing Documents.

Landlord, in its sole and absolute discretion, shall have the right from time to time to adopt, amend, modify, alter, and terminate in a reasonable manner certain rules and regulations, standards of operations, policies, procedures and practices deemed necessary and appropriate for the purpose of assuring the safety, welfare, fairness and equality without unjust discrimination, convenience and protection of property of Landlord, Tenant, other tenants and users of the Airport, their customers, and the general public (herein collectively referred to as the "Airport Governing Documents.") Tenant hereby agrees to comply fully at all times with these Airport Governing Documents.

As of the Effective Date of this Lease such Airport Governing Documents include, without limitation:

- Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers vr. 2004 (also commonly referred to as the "Minimum Standards" or "Airport Minimum Standards"); and
- 2. Addison Airport Rules and Regulations vr. 2010 (also commonly referred to as the "Rules and Regulations" or "Airport Rules and Regulations"), which shall govern Tenant's use of the Demised Premises and all Common Facilities of the Airport; and
- Addison Airport Rates and Charges a schedule of the current rates, fees and charges assessed by the Airport for various services and facilities, which are generally

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approved in connection with the Airport's annual budgetary process but may be amended from time to time as deemed reasonable and appropriate.

Landlord has also adopted the National Business Aviation Association (NBAA) Noise Abatement Program (https://nbaa.org/aircraft-operations/environment/noise-abatement-program/) revised in 2015. Unless Landlord adopts a noise abatement program of its own, Tenant and Tenant's subtenants and their aeronautical guest and invitees are required to comply with NBAA's recommended noise abatement procedures, which are suitable for any aircraft type and airport operating environment.

Section 19. Signs and Equiptment.

After first securing Landlord's approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised 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, and regulations, including the City 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).

Section 20. Landlord's Right of Entry.

Landlord and Landlord's authorized representatives shall have the right, during normal business hours, to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser 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 Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity, Exculpation and Release.

A. Exculpation.

Landlord and the elected officials, the officers, employees, representatives, agents, and volunteers of Landlord, individually or collectively, in both their official and private capacities, (each a "Landlord Person" and collectively the "Landlord Persons"), and Airport Manager and Airport Manager's owner's, officers, employees, representatives, and agents, in both their official and private capacities, (each a "Manager Person" and collectively the "Manager Persons"), shall not be liable to Tenant or to any of Tenant's owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, subcontractors, or any other person or entity for whom Tenant is legally responsible, and their respective owners,

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directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, and subcontractors, (each a "Tenant Person" and collectively "Tenant Persons"), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or any Tenant Persons and/or the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder.

B. Tenant's Indemnity Obligation.

Tenant shall DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS Landlord and all other Landlord Persons and Airport Manager and all Manager Persons (Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, being collectively the "Indemnified Persons") from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liability, 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 of the Indemnified Persons, whether directly or indirectly (collectively for purposes of this Section, "Damages"), that result from, relate to, are based upon, or arise out of, in whole or in part, (I) any condition of the Demised Premises caused in whole or in part by Tenant or by any Tenant Persons; (II) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease; (III) any representations or warranties by Tenant under this Lease; (IV) any personal injuries (including but not limited to death) to any Tenant Persons and to any third persons or parties arising out of or in connection with Tenant's use and occupancy of the Demised Premises under this Lease; and/or (V) the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons for any reason, including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling. THIS 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 (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PERSONS (OR ANY OF THEM), OR CONDUCT BY THE INDEMNIFIED PERSONS (OR ANY OF THEM) THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TO THE EXTENT GROSS NEGLIGENCE AND/OR WILLFUL CONDUCT ARE ALLEGED SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE INDEMNIFIED PERSONS. Tenant' s liability under this indemnity obligation shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Indemnified Person's or Indemnified Persons' 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 Indemnified Person's or Indemnified Persons' defense costs and attorneys' fees shall be limited to a

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portion of the defense costs and attorneys' fees equal to the Indemnified Person's or Indemnified Persons' 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 and Airport Manager in writing of any claim or demand against any Indemnified Persons, Tenant, or any Tenant Persons 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 Indemnified Persons shall have the right, at the Indemnified Person's or Indemnified Persons' option and own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. Release.

Tenant hereby RELEASES Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, (i) for any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and (ii) any loss or damage that may result from or 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 quasipublic work, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

D. THE PROVISIONS OF THIS <u>SECTION 21</u> SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

Section 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 directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised 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 (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq., as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act,

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the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

- Cleanup Laws: Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws"); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant, during the Term of this Lease, Tenant shall, at Tenant's own 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 Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.
- TENANT'S FURTHER INDEMNITY OBLIGATION. TENANT SHALL INDEMNIFY, C. DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FROM AND AGAINST, AND REIMBURSE LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FOR, ANY AND ALL OBLIGATIONS, DAMAGES, INJUNCTIONS, FINES, PENALTIES, DEMANDS, CLAIMS, COSTS, FEES, CHARGES, EXPENSES, ACTIONS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, SUITS, PROCEEDINGS AND LOSSES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS), AND ALL CLEANUP OR REMOVAL COSTS (COLLECTIVELY FOR PURPOSES OF THIS SUBSECTION, "DAMAGES") AND ALL ACTIONS OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH, (I) THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE AIRPORT, INCLUDING THE COMMON FACILITIES, OR ANY PROPERTY ADJACENT TO THE AIRPORT, BY TENANT OR ANY TENANT PERSONS, AND (II) ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT'S FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY THE AUTHORITY

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UNDER THE CLEANUP LAWS OR ANY OTHER ENVIRONMENTAL LAW, RULE, STANDARD, REGULATION, OR POLICY. 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 [BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF THE LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION OF LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT MAY GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TO THE EXTENT GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT ARE ALLEGED SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE LANDLORD, AND ANY OTHER LANDLORD PERSON, AND AIRPORT MANAGER, AND ANY OTHER MANAGER PERSON. TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON' S OR INDEMNIFIED PERSONS' 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 INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. 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.

- D. Environmental Notices: Tenant shall promptly supply Landlord 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.
- E. Prior to the Commencement Date of this Lease, the Tenant, at Tenant's sole cost and expense, shall be entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If the Phase I ESA indicates the likely presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled, as its sole remedy, to disaffirm this Lease, in which case this Lease shall become null and void and no further obligation shall be borne by either party hereto. A copy of a Phase I ESA and Phase II ESA, if any, shall be delivered promptly to Landlord upon completion.
- F. SURVIVAL: THE PARTIES OBLIGATIONS AND LIABILITIES OF THE PARTIES PURSUANT TO THE TERMS OF <u>Sections 6, 21</u> and <u>22</u> shall survive the expiration or earlier termination of this Lease.

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Section 23. Default by Tenant.

Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an "Event of Default" by Tenant under this Lease:

- A. Failure of Tenant to pay any installment of Rent or any other sum payable to Landlord hereunder, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is to make under this Lease, on the date that same is due and such failure shall continue for a period of ten (10) days after the date on which such payment is to be made.
- 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, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in <u>Subsection A</u> of this <u>Section 23</u>) and such failure shall not be cured within either (i) a specific cure period provided for in this Lease applicable to such failure or (ii) if not otherwise specified, thirty (30) days after written notice thereof to Tenant, provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty [60] days) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

C. INTENTIONALLY DELETED.

- **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 section or chapter of the Bankruptcy Code, 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 or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of ninety (90) consecutive days.
- **H.** Tenant is in default of any other lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

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Section 24. Remedies of Landlord.

- A. Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever.
 - 1. Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant. Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in subsection B. of this Section.
 - Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.
 - Recover unpaid Rent and any Damages (as defined below).
 - 4. Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.
 - Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.
 - **6.** Sue for eviction, specific enforcement, equitable relief, Rent, damages, or any other available remedy.
 - 7. Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within thirty (30) days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.
 - 8. Withhold or suspend any payment that this Lease would otherwise require Landlord to make.
 - 9. Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).
- B. For purposes of this <u>Section</u>, "<u>Damages</u>" includes, without limitation, all actual, incidental, and or consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises, including, without limitation, the costs of brokerage

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commissions and cleaning, make-ready, or repairing the Demised Premises for a substitute tenant or tenants, (D) collecting any money owed by Tenant or a substitute tenant, (E) repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

- C. Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).
- **D.** Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or 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.

Section 25. Default by Landlord.

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential 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 recovery or entitle Tenant to take any action whatsoever with regard to the Demised 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. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

- A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder;
- **B.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or
- C. Seek, through judicial action, a declaratory judgment action, and limited equitable remedies of injunction and specific performance, as well as actual damages directly resulting from such default (but subject to the provisions of subsection B. of Section 26, below).

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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.

Section 26. Mitigation of Damages:

- A. In conjunction with any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than ninety (90) days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24, above).
- **B.** Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:
 - 1. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Demised Premises until and unless Landlord obtains full and complete possession of the Demised Premises, including without limitation, the final and unappealable legal right to relet the Demised Premises free of any claim of Tenant.
 - 2. Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at Addison Airport.
 - 3. Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at Addison Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.
 - **4.** Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.
 - 5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.
 - 6. Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.

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If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and TENANT HEREBY WAIVES AND RELEASES, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No rent collected from a substitute tenant for any month in excess of the rent due under the Lease for that month will be credited or offset against unpaid rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. To the fullest extent permitted by Law, Tenant waives any other obligation by Landlord to mitigate its damages after Tenant fails to pay Rent or vacates or abandons the Premises.

C. Tenant's right to seek actual damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. 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 Demised Premises, which loss or damage is covered by valid and collectible casualty, 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.

Section 28. Title to Improvements.

A. Any and all improvements on the Demised Premises, including, without limitation, any buildings constructed on the Demised Premises by or for Tenant, shall be owned by Tenant during the term of this Agreement. The term "improvements" shall include, without limitation, the Building Improvements) as defined in Section 6.

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- Upon the termination of this Agreement, whether by expiration of the Term hereof or by reason of default on the part of Tenant, or for any other reason whatsoever, the improvements (including, without limitation, the Building Improvements), and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord. In such event (i) Tenant shall deliver up to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance to the prevailing Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices, as amended or modified, with all fixtures and equipment situated in the Demised Premises delivered in good working order, reasonable wear and tear excepted, and (ii) unless Tenant is then default. Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; or (iii) with no less than twelve (12) months remaining to the Term, Landlord may elect to by written notice require Tenant to demolish and remove, or cause to be removed, all improvements from the Demised Premises and restore the Demised Premises to the condition in which the same existed immediately prior to this Lease's Effective Date, in which event Tenant shall, at Tenant's sole cost, risk and expense, perform and complete such removal and restoration in a good and workmanlike manner, in accordance with all applicable ordinances, codes, rules and regulations prior to the expiration or termination of the Term. Upon such termination, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the termination of this Agreement and giving the effective date of said termination or expiration date.
- C. Tenant's obligations under this <u>Section 28</u> shall continue and survive beyond the expiration or termination of this Lease.

Section 29. Mechanics' and Materialmen's Liens; Lien for Rent; Waiver of Landlord Liens.

TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TO THE FULL EXTENT AS PROVIDED IN THIS LEASE, THE INDEMNIFIED PERSONS FROM AND AGAINST ALL LIABILITY ARISING OUT OF THE FILING OF ANY MECHANICS' OR MATERIALMEN'S LIENS AGAINST THE DEMISED PREMISES BY REASON OF ANY ACT OR OMISSION OF TENANT OR ANYONE CLAIMING UNDER TENANT (INCLUDING, WITHOUT LIMITATION, ANY TENANT PERSONS), AND LANDLORD, AT LANDLORD'S OPTION, MAY SATISFY SUCH LIENS AND COLLECT THE AMOUNT EXPENDED FROM TENANT TOGETHER WITH INTEREST THEREON AS PROVIDED IN SECTION 39 as additional Rent, provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises, unless a shorter period of time is dictated by applicable law.

Section 30. INTENTIONALLY DELETED.

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Section 31. Quiet Enjoyment and Subordination.

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the full Term of this Lease. 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 hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises, provided, however, any such subordination shall be upon the express condition that the lienholder executes a commercially reasonable subordination non-disturbance attornment ("SNDA") in which it is acknowledged 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 on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, 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 hereunder and attorn to the purchaser. 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 the foreclosure of such mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis.

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 Demised Premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over.

Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised 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 twenty-five percent (125%) of the Base Rent paid for the last month of the Term of this Lease.

Section 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. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to

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accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 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 Demised 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 Demised Premises.

Section 36. Attorneys' Fees.

If, on account of any breach or default by either Party to this Lease, it shall become necessary for either Party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

Section 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.

Section 38. Estoppel Certificate.

- A. Landlord and Tenant agree that from time to time, upon not less than ten (10) business days' prior written request by the other, it will deliver to the other Landlord a statement in writing certifying that:
 - 1. 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).
 - The dates to which Rent and other charges have been paid.
 - 3. The other party 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.
 - 4. If requested by Landlord, Tenant will not pay Rent for 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.

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- **B.** Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:
 - 1. 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).
 - 2. The dates to which Rent and other charges have been paid.
 - 3. 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.

Section 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 at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) 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 cash, 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. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

Section 40. 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"), and Tenant agrees and consents to the same. 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 Demised 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 limit or obstruct access to the Demised Premises and/or to the Airport; (ii) releases, waives and discharges Landlord and Manager, and Landlord Persons and Manager Persons, 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 Demised 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 any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section are

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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 <u>Section</u> is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Independent Contractor.

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

Section 42. Force Majeure.

- A. 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, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, 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.
- **B.** In the event performance by Tenant 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, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or hindered.

Section 43. 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.

Section 44. 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. The terms "day", "week,", "month", "year" or any plural form of said terms shall be construed to mean on a calendar basis unless expressly stated otherwise. For the purposes herein, the term "business day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Texas are authorized or required by law or other governmental action to close.

Section 45. Captions.

The captions or headings, sections, 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.

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Section 46. Successors; No Third Party Beneficiaries; No Waiver of Immunity; No Tax Representation.

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.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability.

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the Term of this Lease not exceed 40 years (480 months); if it should be determined that the Term of this Lease exceeds such period of time, the Term hereof shall be reformed so as to make the Term hereof not exceed such period of time.

Section 48. Notices.

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person; (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested; or (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day. Such notice or document shall be deemed to be delivered or given, whether actually received or not (a) when received if delivered or given in person; (b) if sent by United States mail three (3) business days after being deposited in the United States mail as set forth above; or (c) on the next business day following the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth

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above. Addresses for the delivery or for giving of any such notice or document are as follows (or at such other address as either Party might specify by written notice):

TO LANDLORD:

Town of Addison, Texas c/o City Manager 5300 Belt Line Road Dallas, Texas 75254 Email: wpierson@addisontx.gov

and

Town of Addison, Texas c/o Addison Airport Manager 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Attn: Real Estate Manager Email: bill.dyer@addisonairport.net

TO TENANT:

AQRD Hangar Management LLC c/o Manager – V. Raj Narayanan 4600 Claire Chennault Drive Addison, Texas 75001 Email: Raj@AerospaceQrd.com

Section 49. 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.

Section 50. 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.

Section 51. Consent; "Includes" and "Including"; Recitals.

Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

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Section 52. Governing Law, Venue, Survivability of Rights, and Remedies.

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, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper. Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the Term hereof shall survive the cancellation, expiration or termination of this Lease.

Section 53. Entire Agreement and Amendments; Authorized Persons.

This Lease, consisting of fifty-three (53) <u>Sections</u> and <u>Exhibits 1-6</u>, <u>Lease Addendum #1</u> and <u>Lease Addendum #2</u> attached hereto, 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 in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

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

TENANT:	LANDLORD:
AQRD Hangar Management LLC a Limited Liability Company	Town of Addison, Texas A Texas home-rule municipality
By: V. Raj Narayanan, Manager	By:

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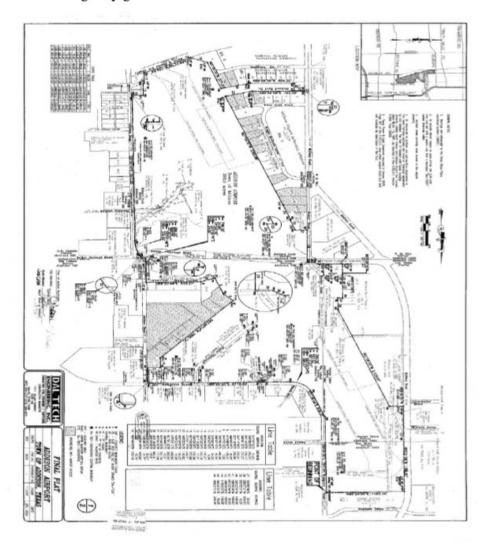
ACKNOWLEDGEMENTS

STATE OF TEXAS COUNTY OF DALLAS	§ § §	
Narayanan, Manager of AC known to me to be the pe acknowledged to me that he	undersigned authority, on this day personally app (RD Hangar Management LLC, a Texas limited liablerson whose name is subscribed to the foregoing in executed the same for the purposes and consideration of the purposes. Y HAND AND SEAL OF OFFICE, this the day day 22.	ility company, astrument, and therein stated.
STATE OF TEXAS COUNTY OF DALLAS	§ § §	
municipality, known to me to	e undersigned authority, on this day persona, City Manager of the Town of Addison, o be the person whose name is subscribed to the foregoi at he executed the same for the purposes and consider	a home-rule ng instrument,
GIVEN under my ha	nd and seal of office this day of	, 2022.
Irma G. Parker Notary Public, State of Tex Comm. Expires 08-07-2022 Notary ID 4770064		
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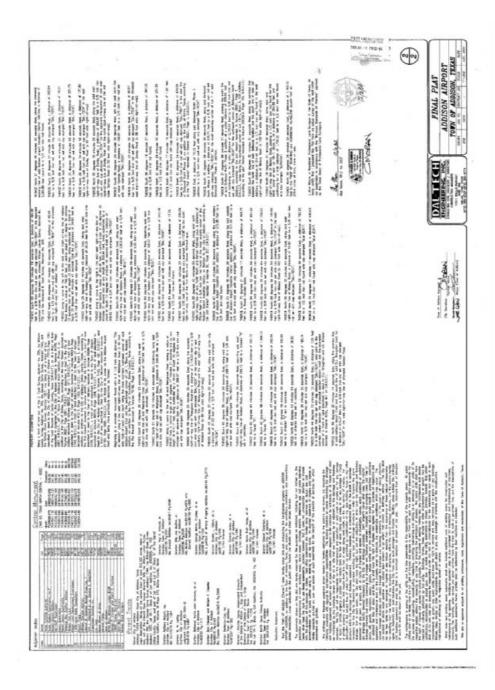
Town of Addison, Texas Resolution No.

Exhibit 1 Legal Description of Addison Airport

The property platted pursuant to the Final Plat, Addison Airport, recorded as Instrument #200503420292 in Dallas County, Texas Official Public Records as depicted on the following two pages.



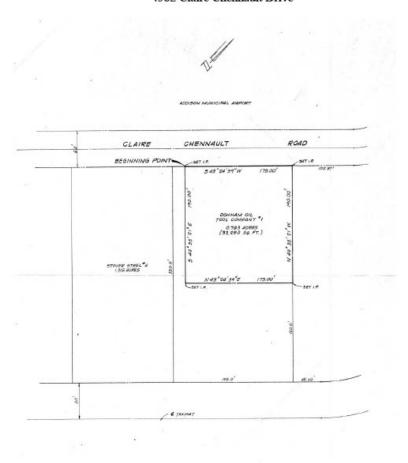
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Property Survey of Demised Premises

4582 Claire Chennault Drive

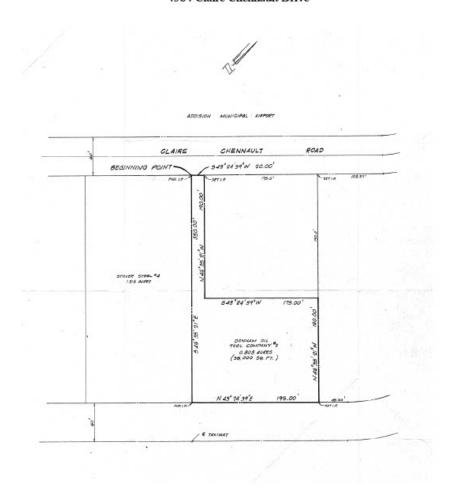


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Exhibit 2 (continued)

Property Survey of Demised Premises

4584 Claire Chennault Drive



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Legal Descriptions of Demised Premises

4582 Claire Chennault Drive

Being a tract of land withalted in the William Loman Spreey, Anstract 191, Dellas County. Texes and located op Addition Naviciael Airport, Addishm. Texas, and being more fully described as follows:

COMMUNISH at the intersection of the west Right

COMMENCING at the intersection of the west Right-of-Way line of Addison Road, a 60 foot street, and the south Right-of-May line of Mestgrove Road a 60 feet street:

THEREE 5.89" 54" 46" W along the south line of 5214 Westgrove Road e distance of 730.00 feet to a guist in the cesterling of Claire Chommoult Road (an underleated 60 foot street):

THENCE 5 00" 05" 14" E along the centerline of Claire Chemnault Road projected a distance of 301.36 feet to an angle point;

THERE'S 43° 24' 30° M along the centerline of Claire Chemnault Road projected a distance of 37.27 feet to as angle point on the centerline of Claire Chemnault Boad.

THEMEE 5 45" 35' 21" E to the southerly Right of May of said road a distance of 30.00 feet. to an iron rod set for the BEGINNING POINT of this description:

THERCE 5 46" 35' 21" E a distance of 190.00

THEMEE N 43" 24" 39" E a distance of 175.00

THENCE N 46" 35' 21" W a distance of 190.00 feet to an iron had sat in the southerly Right-of-Way line of Claime Chemneult Road

THENCE 5 43° 24° 39" W along the southerly Right-of-Way line of said road a distance of 175,00 feet to the BEBINING FORM and

Ricer & Machanier, Inc.

4584 Claire Chennault Drive

Being a truct of land situated in the William Long: Survey, Apetract 750, Dalles County, Texas and located on Addition Manicipal Airport, Addison, Texas, and being more faily described

compension at the intersection of the west Fightof-May line of Addison Road, a 60 foct street, and the south Right-of-Way line of Westgrove Road

THENEE S 89" 54" 46" M along the south line of said Mestgrove Road a distance of 730.00

THENCE S 00" 66' 14" E along the centerline of Claims Chemnalt Road projected a distance

THEME 5 47" 30" 30" W along the centerline of Chaire Chemantt Road projected a distance of 30" 3) feet to an angle point on the centerline

THENCE S AR" 25" 21" E to the southerly Tightof May of said road a distance of 20.00 feet to an iron road found for the BEGINDING POINT of this description:

DENCE 5 48" 35' 21" E a distance of 360.00 feet to an iron rod found in the intriberly Right-of-the line of taying (130 feet wide) for

Tience N 41" 24" 25" E along the northerly Right-office of said taxiway a distance of

DENCE A 46" 36" 23" N a distance of 160.00

feet to an iron red set for corner; THERET S. 43° 24° 39° M a distance of 175.00

THEREE \$ 45° 35' 21" N a distance of 190.06 feet to an iron rod set to the Southerly Right-of-lay line of Claims Channault Road for corner;

THEMEP S as" 24" 39" W along the souther's Right-of-play line of Said road a distance of 20,00 feet to the BEGINSES POINT and containing





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Description of New Building Improvements

To be further developed by AQRD Hangar Management LLC and Landlord Prior to Conclusion of Due Diligence Period

This Exhibit 4 hereby includes by reference the complete set of Construction Documents approved by the Town of Addison for the Building Improvements including but not limited to all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

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Form of Memorandum of Lease

AFTER RECORDING RETURN TO:

Addison Airport Management c/o Real Estate Manager 4545 Jimmy Doolittle Road, Suite 200 Addison, Texas 75001

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of 202, and executed by and between the Town of Addison, Texas ("Landlord") and AQRD Hangar Management LLC, a Texas limited liability company ("Tenant"). WHEREAS, in consideration of the premises and of the mutual covenants and agreements set forth in that certain Ground Lease Agreement dated as of 2022 (the "Ground Lease"), by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, a certain parcel of land located at and within Addison Airport ("Airport") that is more particularly described in Exhibit A attached hereto and made a part hereof, for a term of sixty (60) months following the Commencement Date (as defined in the Ground Lease), subject to all of the terms, provisions and conditions of the Ground Lease. WHEREAS, Pursuant to Section 2.C.2 of the Ground Lease, provided Tenant (i) is not then in default beyond the expiration of applicable notice and cure periods under this Lease or any other agreement with Landlord, (ii) achieves Final Completion of the New Building Improvements, and (iii) exceeds the stipulated Construction Value for the New Building Improvements (as such terms are defined in Lease Addendum #2 of the Ground Lease) on or before the expiration of the Base Term above, the Base Term shall be extended so that this Lease will end June 30th, 2057 ("Extended Base Term"). WHEREAS, Tenant has completed, to Landlord's satisfaction, each of the above requirements necessary to qualify for the Extended Base Term, thus extending the expiration of the Ground Lease to June 30th, 2057. Now let it be known, the said Ground Lease is amended by that First Amendment to , 202_, which, among other things, Ground Lease, entered and made effective extends the Term so the Ground Lease shall now expire June 30, 2057 unless otherwise earlier terminated. Page 47 0630-3204

Town of Addison, Texas Resolution No.

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

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

Lease this _____, 202___.

IN WITNESS WHEREOF, the undersigned parties execute this Memorandum of

TENANT:	LANDLORD:
AQRD Hangar Management LLC a Limited Liability Company By:	Town of Addison, Texas A Texas home-rule municipality By:
V. Raj Narayanan, Manager	, City Manage

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ACKNOWLEDGEMENT

STATE OF TEXAS	§ §
COUNTY OF DALLAS	§
Narayanan, Manager of AC company, known to me to instrument, and acknowledg consideration therein stated.	dersigned authority, on this day personally appeared V. Raj QRD Hangar Management LLC, a Texas limited liability be the person whose name is subscribed to the foregoing sed to me that he executed the same for the purposes and and seal of office this day of WYL,
Melissa Newman My Commission Expires 03/02/2024 ID No. 7450509	Notary Public, State of Texas
STATE OF TEXAS COUNTY OF DALLAS	§ § §
City M known to me to be the perso acknowledged to me that he stated	undersigned authority, on this day personally appeared, anager of the Town of Addison, a home-rule municipality, n whose name is subscribed to the foregoing instrument, and executed the same for the purposes and consideration therein
GIVEN under my hai 202	nd and seal of office this day of,
Irma G. Parker Notary Public, State of Texa Comm. Expires 08-07-2022 Notary ID 4770064	
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790 17	0030-3204

Town of Addison, Texas Resolution No. ____

EXHIBIT A

PROPERTY SURVEY AND LEGAL DESCRIPTION OF DEMISED PREMISES

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Form of Irrevocable Standby Letter of Credit

Town of Addison, Texas Resolution No.

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[Lender Letterhead]

IRREVOCABLE LETTER OF CREDIT #
Date:, 202
Beneficiary:
Town of Addison, Texas c/o City Manager 5300 Belt Line Road Dallas, Texas 75254 Email: wpierson@addisontx.gov
Applicant:
[TENANT]
Attention:
Gentlemen:
We hereby issue our Irrevocable Standby Letter of Credit # in favor of Beneficiary. This Letter of Credit is effective up to the aggregate amount of and No/100 Dollars (\$00) available by draft drawn on Issuer at sight, marked "Drawn under Irrevocable Standby Letter of Credit # "accompanied by the following:
1. Beneficiary's written statement purportedly signed by its authorized representative reading as follows: "The undersigned is authorized to make the following statement on behalf of Town of Addison, Texas ("Beneficiary"). Beneficiary hereby certifies that an event of default has occurred under that certain Lease Agreement dated, 20, between Beneficiary and Applicant (the "Lease") with respect to the construction of the Building Improvements, as defined therein, and that such default is ongoing. The amount of the draft presented represents the amount known by me to be required to complete construction of the Building Improvements under the Lease."

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This original Letter of Credit and any amendments thereto (if any). In the event
of a partial drawing the original Letter of Credit will be endorsed and returned
to you, unless the Letter of Credit has expired or the amount available is reduced
to zero.

Special Conditions:

- Partial drawings are permitted under this Letter of Credit.
- Other than Beneficiary's statement required above, the Issuer shall require no further substantiation of the occurrence of such an event of default, consent of Applicant, or proof of the necessity of the draw.
- 3. This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way by modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
- Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification.

, , ,	will be duly hor	nored if presented f	I in compliance with the terms or payment to [LENDER], a
on or before			, prior to 5:00 pm
on or octore	, 202		
	,	-	orm Customs and Practice for merce (Publication 600, 2007
Revision).	i inc interitationa	r chancer or com	nicice (Fuorication 600, 2007
[LENDER]			
Val 5 0 5			
Name:			
Title:		<u></u>	

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Lease Addendum #1

Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices

I. Purpose: Pursuant to Section 11 (or elsewhere as provided for) of the Lease¹ the Tenant is required to maintain the Demised Premises and all improvements, fixtures, equipment and personal property thereto in "good repair and in a first class condition" and in accordance with all applicable ordinances, codes, rules and regulations of or adopted by the City of Addison or any regulating agency with oversight of any or all portions of the Demised Premises throughout the Term as it may be extended or otherwise amended.

Additionally, Section 28 entitled Title to Improvements provides, among other things, Tenant shall own and hold title to any building improvements constructed on the Demised Premises and upon the expiration or early termination of the ownership of said building improvements, said building improvements shall merge with the title of the Demised Premises and become the property of the Landlord Landlord may, at Landlord sole discretion, elect Tenant to: (i) deliver to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance with these Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices together with all fixtures and equipment situated in the Demised Premises with reasonable wear and tear excepted; or (ii) prior to the expiration or early termination of the Term, demolish and remove or cause to be removed from the Demised Premises all building improvements together with any fixtures or equipment remaining and restore the Demised Premises to reasonably the same condition it was found immediately prior Tenant's taking possession of the Demised Premises as of the Effective Date. Such demolition and removal shall be performed at Tenant's sole cost and risk in accordance with all prevailing ordinances, codes, rules and regulations governing same.

Therefore, these <u>Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices</u> ("Maintenance Standards") hereby set forth in general the minimum level of standard of maintenance and repair or practice the Landlord expects of Tenant and Tenant (or any of its successors and, or assigns) agrees to be obliged in order to comply with the terms and conditions of the Lease.

II. Governing Standard or Practice: Section 8.A. of the Lease states the Tenant agrees to comply with all laws, ordinances, rules, regulations, directives, permits, policies or standards of any governmental authority, entity, or agency affecting the use of the Demised Premises; and any "Construction/Maintenance Standards and Specifications" published by Landlord or its Airport Manager governing such matters at Addison Airport. Section 11.B. of the Lease states "Should there ever arise a conflict between the degree of standard or duty to practice any such standard or practice between [these Maintenance Standards] and

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All capitalized terms used in these Tenant's Minimum Leasehold Maintenance Standards and Procedures are as used and defined in the underlying Lease unless otherwise defined herein.

any new construction and maintenance and repair standard so adopted by the Landlord, the standard and/or practice representing the higher or greater degree of standard and/or practice shall prevail as if such higher degree of standard and/or practice is incorporated into and made a part of these [Maintenance Standards].

III. Terminology Used: Unless otherwise provided herein, the definition and/or the description of certain terms used or referred to below shall be the same as defined in the Lease or ASTM International Standard E2018-15² (as it may be amended or modified from time to time or its equivalence as generally accepted by the United States commercial real estate industry at the time).

For the purpose herein the standard being in "good repair and in first-class condition" generally means when the building component or system is serving its designed function, is of working condition and operating well, shows evidence of being well taken care of and does not require immediate or short-term repairs above its *de minimis* threshold or does not evidence a material physical deficiency.

<u>Building System</u> – Interacting or independent components or assemblies, which form single integrated units that comprise a building and its site work, such as pavement and flatwork, structural frame, roofing, exterior walls, plumbing, HVAC, electrical, etc. (ASTM E2018-15).

<u>Component</u> – A portion of a building system, piece of equipment, or building element (ASTM E2018-15).

<u>Deferred Maintenance</u> – Physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property (ASTM E2018-15).

<u>Effective Age</u> – The estimated age of a building component that considers actual age as affected by maintenance history, location, weather conditions, and other factors. Effective Age may be more or less than actual age (ASTM E2018-15).

<u>Engineer</u>: Designation reserved by law for a person professionally qualified, examined, and licensed by the appropriate governmental board having jurisdiction, to perform engineering services (ASTM E2018-15).

<u>Expected Useful Life</u> – The average amount of time in years that an item, component or system is estimated to function without material repair when installed new and assuming routine maintenance is practiced (ASTM E2018-15).

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² ASTM Designation E2018-15; November 2015ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken PA 19428-2929, United States

<u>Fair Condition</u> – To be found in working condition, but may require immediate or short term repairs above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

<u>Normal Wear and Tear</u> - Defined as deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the Tenant, by a guest or invitee of the Tenant (Section 93.006[b]); Chapter 93 of the Texas Property Code entitled "Commercial Tenancies"

<u>Physical Deficiency (ies)</u> – The presence of a conspicuous defect or defects and/or material deferred maintenance of a subject property's material systems, components, or equipment as observed. Specifically excludes deficiencies that may be remedied with routine maintenance, miscellaneous minor repairs, normal operating maintenance, etc. (ASTM E2018-15).

<u>Poor Condition</u> – Found not to be in working condition or requires immediate or short term repairs substantially above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

<u>Routine Maintenance</u> - Repair that does not require specialized equipment, professional services, or licensed contractors but, rather can be corrected within the budget and skill set of typical property maintenance staff (ASTM E2018-15).

IV. Baseline Property Condition Assessment: Beginning on or about the tenth (10th) anniversary but no later than the twelfth (12th) anniversary of the Term, Tenant shall procure, at the sole cost of Tenant, a Property Condition Assessment baseline report (PCA) to be prepared, written and signed by a licensed professional engineer qualified to assess the condition of the Demised Premises and all Building Improvements, fixtures and equipment made a part thereto pursuant to the then-operative version of ASTM International Standard Designation E2018 as of the date the PCA is performed. If at that time, for any reason, ASTM International no longer publishes standards for conducting property condition assessments for commercial real estate in the United States, Landlord and Tenant shall mutually agree to adopt another similar standard of practice to be performed by qualified third Parties recognized and accepted by the commercial real estate industry in the United States.

For any portion of the Demised Premises designed and constructed with the intent to be used for the storage and movement of aircraft, the PCA shall also include an aircraft pavement condition assessment performed for such areas in accordance with FAA Advisory Circular 150/5380-7A "<u>Airport Pavement Management Program</u>" and ASTM Standard Designation D5340 "<u>Standard Test Method for Airport Pavement Condition Index Surveys</u>" (or their respective operative standard in effect at the time of the PCA report date) (the "Pavement Standards"). If no such standard exists at the time, the pavement

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condition assessment shall be performed based on prevailing industry standards as of the date of the assessment.

- A. Within thirty (30) days of the published date of the PCA report Tenant shall deliver to Landlord a complete signed original copy of the PCA report together with the aircraft pavement condition assessment, if any, together with:
- (1.) "Tenant's Remedy Plan", a written plan prepared by Tenant itemizing and given in sufficient detail Tenant's plan to remedy and cure, at Tenant's sole cost and expense, any and all Physical Deficiencies and, or Deferred Maintenance matters identified and communicated in the PCA report. Tenant's Remedy Plan shall indicate, among other things, that all work will be completed in a good and workman like condition pursuant to all local building codes and ordinances as required by the Lease within one hundred and eighty (180) calendar days from the date of the PCA's published report date (the "Remedy Period") unless otherwise agreed to in writing by Landlord.
 - (a.) If the pavement condition index (PCI), as defined in the Pavement Standards, reflects a score less than 70 (or its equivalence) the Tenant's Remedy Plan shall set forth in sufficient detail Tenant's intended remedy and cost estimate necessary to increase the aircraft pavement PCI score to a minimum of 70 within the Remedy Period.
 - (b.) In the event the PCA recommends supplemental testing or evaluation of any building component including, but not limited to, structural, building envelope, roofing, HVAC, plumbing, electrical, fire alarm and suppression, elevator, hangar door and/or door operators, environmental, pavement and ADA, Tenant's Remedy Plan shall reflect Tenant's plan to complete such supplemental investigations as recommended within the Remedy Period.
- (2.) "Tenant's Facility Maintenance and Repair Plan" (or "Maintenance Plan") which sets forth in sufficient detail Tenant's stated itemized objectives to maintain and keep all building components and systems, pavement and landscaped areas in good condition and repair together with any planned capital repairs, including those cited in the PCA report and any capital improvements planned within the next ten (10) years following the PCA published report date. Additionally, the Maintenance Plan should include but not be limited to the following:
 - (a.) Tenant's schedule and checklist for periodic self-inspection of all major building components and systems on annualized basis.
 - (b) Tenant shall periodically update the Maintenance Plan to reflect scheduled repairs made together with itemized repair costs given, new

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conditions found as a result of Tenant's periodic self-inspections and Tenant's plan to maintain or repair said condition.

B. If Tenant fails to deliver to Landlord a complete signed original Baseline PCA Report, Tenant's Remedy Plan and Tenant's Facility Maintenance and Repair Plan as required herein. Landlord may provide written notice thereof to Tenant. Tenant shall have sixty (60) days after receipt of such notice to provide such report or plan. Tenant's failure to provide the documentation required herein shall be considered an event of default of the Lease. Tenant's failure to promptly remedy any Physical Deficiency (ies) identified and communicated in any PCA report as required herein is also considered an event of default under the Lease. In the event of such default(s), in addition to all other rights and remedies available to Landlord under the Lease and by law, Landlord may, but not be obligated to, cause such reports and plans to be prepared and implemented as deemed commercially reasonable; and all reasonable costs therefore expended by Landlord plus interest thereon as provided for in Section 39 of the Lease shall be paid by Tenant upon demand

V. Requirement for Subsequent Baseline Property Condition Report Updates, Tenant Remedy Plan Updates and Tenant's Facility Maintenance and Repair Plan Updates:

- A. Upon each ten (10) year anniversary of the Term (but not later than two (2) years after each 10-year anniversary) Tenant shall procure, at its sole cost and expense, a PCA update (including aircraft pavement condition assessment) with the subsequent PCA report being of similar form and scope as the initial baseline PCA outlined above. Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) days of the published date of the subsequent PCA report, Tenant shall deliver to Landlord a complete signed original of the subsequent PCA report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the subsequent PCA report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the most recent subsequent PCA report findings and recommendations.
- B. With no more than seventy-two (72) and no less than sixty (60) months remaining until the Lease Expiration Date, Tenant shall procure, at its sole cost and expense, a final PCA report (including aircraft pavement condition assessment) with the final PCA report being of similar form and scope as the initial baseline PCA outlined above (the "Final PCA Report"). Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) days of the published date of the Final PCA Report, Tenant shall deliver to Landlord a complete signed original of the Final PCA Report together with the aircraft pavement

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condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the Final PCA Report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the Final PCA Report findings and recommendations which are to be implemented through the Lease Expiration Date.

VI. Qualification of Property Condition Reviewer: The qualifications of a third-party consultant performing or overseeing the PCA shall be:

- Licensed in the state of Texas as a professional architecture or engineer;
- Demonstrated experience working with general aviation type properties;
- Having working knowledge of relevant FAA Advisory Circulars and ASTM Standards relating to facility and pavement maintenance and survey standards affecting the subject property type and scope (size and complexity, etc.); and
- Experience preparing property condition reports.

VII. Record Retention: Throughout the Term Tenant shall diligently gather and retain in an orderly manner all documentation affecting and relating to the Building Improvements and any fixtures or equipment made a part of the Demised Premises. To the extent possible the Tenant shall retain digital copies of all such documentation, which can be easily reviewed, inspected and sourced. All such documents are to be made available to each consultant assigned to perform the property condition assessment and pavement condition analysis. Such documents to be retained should include but not be limited to:

- Site plan updated as necessary.
- Property Survey updated as necessary to reflect any changes to the Demised Premises.
- Construction and "as-built" drawings together with written building specifications.
- Certificate of Occupancy and building permits.
- Building Owner's Manual received from the General Contractor
- Pavement Condition Assessment Reports (aircraft apron and other)
- Insurance casualty claims and adjustment reports affecting the Building Improvements
- Description of future/planned material improvement or repairs.
- Outstanding notices and citations for building, fire, and zoning code and ADA violations

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- Previously prepared, if any, Property Condition Assessment reports or engineering testing and surveys pertaining to any aspect of the subject property's physical condition.
- Lease listing literature, listing for sale, marketing/promotional literature such as photographs, descriptive information, reduced floor plans, etc.
- Periodic inspection reports (self or third-party) and supporting documentation.
- · Irrigation Plans, updated as needed
- Operating manuals, instructions, parts lists

VIII. Reversionary Process (at Lease Expiration or Early Termination): Pursuant to the terms and conditions of the Lease, unless otherwise amended or modified the Lease is due to expire at the end of the Lease Expiration Date at which time any and all Building Improvements and any subsequent improvements and alterations made thereto as defined in the Lease revert and become under the ownership of the Landlord. If Tenant is not then in default of the Lease, Tenant shall have the right to remove all personal property and trade fixtures owned by the Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal, which work shall be conducted in a good and workmanlike manner and at Tenant's sole cost and expense.

Accordingly, in order to facilitate an orderly transfer of all the ownership interests of the Demised Premises, Tenant shall deliver or cause to be delivered to Landlord all of the following on or before the Expiration Date, or earlier termination of the Lease:

- A. Tenant's Representations: Tenant shall certify and attest in writing, in a form acceptable to Landlord:
 - (1.) Tenant conveys to Landlord in good and indefeasible title all the Building Improvements free and clear of any and all liens, assessments, easements, security interests and other encumbrances; and
 - (2.) There are no lessees or sub-lessees in possession of any portion of the Building Improvements, tenants at sufferance or trespassers; and
 - (3.) There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Building Improvements, and all obligations of Tenant arising from the ownership and operation of the Demised Premises and any business operated on the Building Improvements including but not limited to taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid before the Expiration Date; and
 - (4.) There is no pending or threatened litigation, condemnation, or assessment affecting the Building Improvements; and

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- (5.) Tenant has disclosed to Landlord any and all known conditions of a material nature with respect to the Building Improvements which may affect the health or safety of any occupant of the Demised Premises. Except as disclosed in writing by Landlord or Tenant, the Improvements have no known latent structural defects or construction defects of a material nature, and none of the improvements has been constructed with materials known to be a potential health hazard to occupants of the Building Improvements; and
- (6.) Except as otherwise disclosed in writing by Tenant to Landlord, the Building Improvements does not contain any Hazardous Materials other than lawful quantities properly stored in containers in compliance with applicable laws. For the purpose herein, "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, or any other federal, state or local environmental law, ordinance, rule, or regulation, whether existing or subsequently enacted during the Term.
- B. Any Rental and monies due under the Lease unless paid in full; and
- C. A Bill of Sale conveying personal property remaining or left on the Demised Premises, if any, free and clear of liens, security interest and encumbrances; and
- D. All plans, drawings and specifications respecting the Building Improvements, including as-built plans and specifications, landscape plans, building system plans (HVAC, Telecom/Data, Security System, plumbing) air-conditioning in Tenant's possession or control; and
- E. Inventory with corresponding descriptions and identification of all keys, lock combinations, access codes and other such devices or means to access every securable portion, compartment, cabinet, panel, closet, gate or point of entry within the Demised Premises; and
- F. All soil reports, engineering and architectural studies, grading plans, topographical maps, feasibility studies and similar information in Tenant's possession or control relating to the Demised Premises; and.
- G. A list and complete copies of all current service contracts, maintenance contracts, management contracts, warranties, licenses, permits, operating agreements, reciprocal easement agreements, maps, if any, applicable to the Demised Premises, certificate of occupancy, building inspection approvals and covenants, and conditions and restrictions respecting the Demised Premises; and
- H. Copies of all utility bills (electric, water/sewer and gas) and similar records respecting the Building Improvements for the past three (3) months; and

A schedule of all service contracts, agreements and other documents not expressly referenced herein relating to the Demised Premises.

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Lease Addendum #2

Construction of Building Improvements

Note: Capitalized terms used herein are the same as defined in the Lease or any Addendum other attached and made a part of the Lease unless otherwise expressly provided for. This Lease Addendum #2 is made a part of and hereby incorporated into the Lease by reference.

A. Building Improvements. For purposes herein, the term "Building Improvements" shall mean, without limitation the Existing Building Improvements, as defined in the Preamble of the Lease made on or to the Demised Premises as of the Effective Date, the New Building Improvements as defined in sub-section B below, and any Future Building or Other Improvements made to, constructed, installed, located or placed upon the Demised Premises throughout the Term, as amended or modified, as provided for sub-section C below. Except as provided for in the Lease or this Lease Addendum #2, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

B. New Building Improvements

- 1. As provided for in <u>Section 2.C.2</u> of the Lease entitled *Extended Term Option*, Tenant has the option to construct or cause to be constructed on the Demised Premises, at Tenant's sole cost, expense and risk, certain building improvements more fully described in <u>Exhibit 4</u> of the Lease, which is incorporated herein by reference (the "<u>New Building Improvements</u>"). Accordingly:
 - a. The New Building Improvements are to be constructed in accordance with plans and specifications prepared by a state licensed architect and/or engineer retained by Tenant (the "Design Plan"), which said Design Plan shall be submitted to Landlord for approval evidenced by the issuance of a building permit necessary to construct the New Building Improvements. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility. Landlord agrees its approval of the Design Plan shall not be unreasonably withheld, conditioned or delayed.
 - b. Tenant shall bear all cost and expense of the demolition and removal of any Existing Improvements on, or in the Demised Premises in accordance with the Design Plan.
 - c. The construction cost or value (separate and apart from the cost of design) of the New Building Improvements shall exceed One Million One-Hundred Tousand Dollars (\$1,100,000.00) (the "Construction Value"), and Tenant shall submit to

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Landlord upon request all commercially reasonable evidence of such Construction Value in a form acceptable to Landlord (the "Construction Value Evidence"). For purposes hereof, reasonable evidence of Construction Value would be satisfied by the American Institute of Architects (AIA) G702 and G703 Application for Payment certified by the Tenant, owner, architect or engineer and, Tenant's general contractor to be true and correct to their best knowledge or some form of documentation similar thereto acceptable to Landlord.

- d. Once construction of the New Building Improvements commence, Tenant shall complete construction of the New Building Improvements, with reasonable diligence, without material deviation from the Design Plan, and any material deviation from the Design Plan shall be subject to the advance review and approval of Landlord.
- e. "Substantial Completion of the New Building Improvements" or "Substantial Completion" shall be (unless provided for elsewhere in this Lease) deemed to have occurred upon the issuance by the Town of Addison, Texas, of a certificate of temporary or final occupancy for any portion of the New Building Improvements, if required. If a certificate of temporary or final occupancy is not required under the local building codes, Tenant shall deliver a notarized affidavit to the Landlord that all New Building Improvements are completed per the approved Designed Plan.
- f. "<u>Final Completion</u>" of the construction of the New Building Improvements shall be deemed to occur upon (i) the issuance by Tenant's architect who designed the New Building Improvements, if any, of such documentation as may be necessary to establish the final completion (closeout) of the construction of the New Building Improvements, (ii) delivery by Tenant to Landlord comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan, and (iii) Tenant's Construction Cost Evidence defined in subsection 1.c above.
- C. Future Building and Other Improvement Construction: To construct, locate, install, place or otherwise erect any other improvements upon the Demised Premises other than the Existing Building Improvements and New Building Improvements provided for in the Lease or herein, shall be regarded "Future Building and Other Improvements" which shall be performed, if any, substantially in the same manner, standard and regard as provided in this Lease Addendum #2, including without limitation as required for the New Building Improvements and requirements for Construction Insurance, Performance and Performance Bond or Irrevocable, Stand-by Letter of Credit as set forth in subsection E, below.

D. General Terms and Conditions Governing New Building Improvements and Future Building and Other Improvements:

 Any architect or engineer shall be duly licensed to practice architecture or engineering, respectively, in the State of Texas. Such construction shall be performed in a first-class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail below. Tenant agrees to promptly pay

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and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction or violation of this Lease with respect thereto, and TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER IN ACCORDANCE WITH SECTION 21.B. entitled TENANT'S INDEMNITY OBLIGATION. It is expressly understood and agreed that Tenant's construction of any building improvements shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

- 3. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.
- Tenant agrees that any construction or modification of the Building Improvements or any other improvements (authorized to be constructed in writing by Landlord) on the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, shall further comply with the Town of Addison, Texas building and related codes and zoning requirements, and will meet or exceed all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, ("ADA") any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building and related codes and zoning requirements, and all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.
- 5. With respect to Title III of the Americans With Disabilities Act of 1990, Tenant acknowledges and agrees it shall remain fully responsible and obligated over the Term to construct, alter and maintain the Building Improvements in accordance with the prevailing ADA Act. Furthermore, Tenant shall ensure no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, retaliation or genetic information, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the ADA Act. Tenant shall give Landlord written notice within ten (10) days of Tenant having knowledge or written notice of any ADA Act violation

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or claim of violation from any governmental entity with authority on such matters or from any third party.

- 6. Tenant will properly and timely submit to the FAA the TxDOT, and any other governmental authority, entity or agency having jurisdiction regarding the Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over the Airport.
- 7. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises and all parts thereof, during normal business hours, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

E. Construction Insurance, Performance and Performance Bond or Irrevocable, Stand-by Letter of Credit:

In addition to the applicable insurance requirements set forth in Section 13 of the Lease:

- During any period of construction, Tenant or Tenant's General Contractor shall obtain and keep in full force and effect a Builder's Risk Completed Value policy with an all-risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse vandalism, malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$5,000 or deductibles imposed by carrier due to state market conditions.
- 2. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00. This coverage must be maintained for at least two (2) years after the improvements are completed and if coverage is written on a claims-made basis, a policy retroactive-date equivalent to the inception date of this Ground Lease (or earlier) must be maintained.
- 3. Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the construction costs. Tenant shall pay or cause to be paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to Landlord, licensed by the State of Texas to act as a Surety, and listed on the

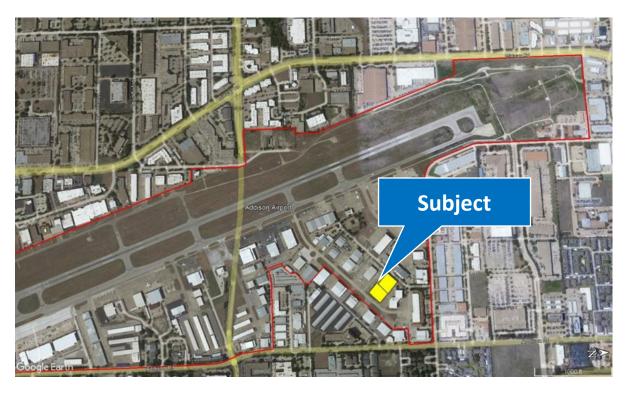
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current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code and any successor statute thereto. Tenant and Landlord shall be named as joint obligees of all such bonds. Alternatively, and at Tenant's election, Tenant shall cause to be issued in favor of Landlord, at Tenant's sole cost and expense, and kept in full force and effect at all times during any period of construction, an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs (the "Letter of Credit"), such Letter of Credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements and Tenant has not cured the event of default after being given notice and a reasonable opportunity to cure as provided in this Lease. The form of such Letter of Credit is attached hereto and incorporated herein as Exhibit 6. Tenant shall cause the original executed Letter of Credit to be delivered to Landlord not later than the Construction Commencement Date. Upon written approval by Landlord on not less than ten (10) business days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the Letter of Credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Tenant during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord. After the completion of the Building Improvements contemplated by this Lease, in the event that Tenant subsequently requests the commencement of additional construction or improvements in an amount equal to or greater than Five Hundred Thousand Dollars (\$500,000), then Tenant shall provide Landlord a Payment Bond and Performance Bond or Letter of Credit in the same manner as articulated in this subparagraph.

F. Failure of the Parties to observe and comply with the requirements of this Lease Addendum #2, subject to notice and cure as provided in Section 23 of the Lease, shall be an Event of Default.

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Subject Location





AQRD Hangar Management, LLC (AQRD) Location: 4582 & 4584 Claire Chennault

Summary of Lease Terms

- 1. **Effective Date:** The Date of Formal Consent by the Town of Addison Town Council.
- 2. **Tenant**: AQRD Hangar Management, LLC ("AQRD").
- 3. **Leased/Demised Premises**: Two parcels of airport land consisting of approximately 1.57+/- acres located at 4582 and 4584 Claire Chennault Drive at the Airport. As of result of the ground lease, the two parcels will be merged into one larger parcel and to be held inseverable for the duration of the Term.
 - A. Both parcels are currently subject to other ground lease agreements, however both will expire and revert to Town on or before June 30, 2022.
- 4. **Preliminary Period**: period of time between the Effective Date and Commencement Date, and inclusive of the Due Diligence Period.
- 5. **Due Diligence Period**: Commencing on the Effective Date of the Lease and continues for the first ninety (90) consecutive calendar days thereafter.
 - A. Environmental Site Assessment at Tenant's expense. The Town will provide AQRD with copies of, or access to, environmental studies, including but not limited to Environmental Site Assessments, conducted on the Leased Premises or adjacent parcels that the Town has in its possession.
 - B. Fees, expenses, and tax obligations that will be assessed on the improvements resulting from the proposed redevelopment and capital improvements made to the Leased Premises from local, state, or federal taxing authorities or other governmental or regulatory agencies.
 - C. Necessary permits, approvals, and waivers required by any governing authority including but not limited to, the Town of Addison, Dallas County, the state of Texas, the Federal Aviation Administration (FAA), and the Texas Department of Transportation (TxDOT), for the completion of the project contemplated herein.
 - D. Estimates for the necessary demolition and removal of, in whole or in part, the Existing Building Improvements and any related remediation efforts to prepare the site for redevelopment.
 - E. Either party has right to terminate the Lease by written notice to the other party, in which case the Lease shall become null and void *ab inito* and no further obligation shall be borne by either party to the other.
- 6. **Commencement Date**: First calendar day following the expiration of the Due Diligence Period.
- 7. **Term**:
 - A. <u>Initial Term</u> is 5-years (60 full months) following Commencement Date.

- B. <u>Extended Term Option</u> Until June 30th, 2057 (34+ years from Effective Date) provided Tenant:
 - i. Is not then in default;
 - ii. Achieves Final Completion of the New Building Improvements provided for in <u>Lease Addendum #2</u> on or before the expiration of the Initial (5-year) Term;
 - iii. Construction Value of New Building Improvements exceed \$1.1M;
- C. To be affirmed with an executed and recorded Memorandum of Lease.

8. Rent:

- A. **Initial Rent Payment** AQRD shall pay as Initial Rent Payment \$635,000 to the Town upon or before the Commencement Date. The Initial Rent Payment is fully earned and non-refundable.
- B. Annual Base Rent \$51,187.50 payable in twelve equal monthly installments of \$4,265.63; (68,250 gross square feet of land X \$.75 per gross square feet of land area). First monthly installment is due on or before the Commencement Date.
- 9. **Adjustment of Rent** based upon the percentage of change in the local CPI between the Commencement Date and its second anniversary; then every two years thereafter over the Term.
- 10. **Permitted and Restricted Use of Premises**: The Leased Premises shall be used and occupied by AQRD or its subtenants only for the following purpose:
 - A. Same as the permitted use of 4600 Claire Chennault
 - B. Standard airport restrictions provisions, without exception.

11. Maintenance and Repair of the Premises:

- A. Among other things includes <u>Lease Addendum #1</u> "<u>Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices</u>,"
- 12. **Title to all Building Improvements:** Tenant shall own all existing and future building improvements made to the premises for the duration of Term
 - A. Ownership reverts to the Town at end of Term;
 - B. Delivery of the improvements at end of Term per Lease Addendum #1;
 - i. Landlord has right to require Tenant to demolish the improvements prior to end of Term with 60-month advance notice, or
 - ii. Broom swept condition and other
- 13. All other terms and conditions are consistent with Town's current lease standards.

Council Meeting 14.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Excellence in Transportation Systems

Milestones: Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action on a Resolution Approving the Ground
Lease Between the Town of Addison and Scarborough I Airport, LP for
Commercial Aviation Use on Approximately .55 Acres of Improved Land
Located at the Addison Airport and Authorizing the City Manager to
Execute the Ground Lease.

BACKGROUND:

Scarborough I Airport, L.P. ("Scarborough") is the owner of the fee-simple property at 16445 Addison Road ("Fee-Simple Property"), which it acquired in 2006. At the same time, Scarborough took assignment of an Airport ground lease that originally commenced in 1981. The Airport ground lease consisted of .55 acres adjacent to the Fee-Simple Property, along Taxiway Uniform. The ground-leased property was improved with concrete pavement (also referred to as aircraft apron) used for the storage and staging of aircraft operating from the Fee-Simple Property; no other improvements were made to the premises. The ground lease expired in February 2022, and the Town took ownership and control of the property and its improvements (the concrete pavement), which were generally regarded to be in fair to poor condition largely due to age (40+years) and continued use over the years. Since the ground lease expired, Scarborough and its subtenants have continued to use and occupy the leased premises subject to a short-term, commercial aircraft storage lease agreement with the Town.

Scarborough proposes to enter into a new long-term ground lease agreement ("Ground Lease") with the Town in consideration of Scarborough reconstructing the aircraft apron to the Airport's current design standards, at Scarborough's sole cost and expense. Accordingly, the Town is prepared to enter into a new ground lease including the following key terms and conditions:

- <u>Commencement Date</u>: Same as the Effective Date when the Ground Lease is fully executed.
- <u>Term</u>: The Initial Lease Term is two (2) years following the Commencement Date.
- Extended Term Option: Provided Tenant satisfactorily completes the

construction of the New Land Improvements, as defined in Lease Addendum #1 of the Ground Lease, and in accordance with Landlord's current design standards, the Term shall be extended so that the Ground Lease ends forty (40) years following the Commencement Date.

- **Rent**: Annual Rent is payable in 12 equal monthly installments over the Term starting at \$13,165 (\$.55/SFL), or \$1,097 per month.
- <u>Adjustment of Rent</u>: Beginning on the second anniversary of the Commencement Date and every two years thereafter over the Term, based upon the percentage of change in the local Consumer's Price Index.
- <u>Permitted Uses</u> Storage of airworthy aircraft and equipment used in connection with Tenant's aeronautical operations only.
- **Restricted Uses** Standard lease restrictions apply.
- Land Improvements and Construction of New Land Improvements:
 - Existing Building Improvements Tenant is responsible for demolition of existing improvements as required by the approved Design Plan at its sole cost, expense, and risk.
 - New Land Improvements Tenant is to reconstruct the entire premises with concrete pavement in accordance with Landlord's current design standards.
- <u>Maintenance and Repair of Demised Premises</u>: Tenant obligated to deliver to Landlord third-party pavement assessments performed every five (5) years over the term. Term.
- <u>Title to Improvements:</u> Upon successful completion of constructing the New Improvements, all improvements are to be owned by Landlord.

The proposed redevelopment represents an estimated \$13,165 in annual real-estate revenue (ground rent) to the Airport. Assuming the Term is extended to 40 years, the net cash flow is projected to be in excess of \$620,000 over the term of the lease.

Overview of Estimated Economic Impact				
Ground Rent	\$13,165	\$.55 per SFL; .55 acres (23,937 SFL)		
Fuel Flowage Fee (FFF)	\$0	Not available		
Projected Business Property Tax (Aircraft)	\$93,000	Assume \$15 million @ \$.61466/mil (DCAD est. TOA rate)		
Projected Ad valorem Leasehold Tax	\$0	Improvements will be city owned and held exempt.		

Total Annual Economic Benefit	\$106,165	
Net Cashflow over Lease Term	\$620,000	Ground Rent & Fuel Flowage Fees Only
Net Present Value (NPV) of Cashflow (disc. @ 6%)	\$222,000	
Tenant's Capital Investment	\$555,000	

The proposed ground lease is essential for the Scarborough fee simple property to continue to operate as an aeronautical facility. Without the use and access of the ground leased apron area, Scarborough would not have the room to actively operate aircraft as needed. Similarly, Scarborough's use of the airport land as an off-airport property, leverages the use and benefit of the airport's infrastructure.

The proposed ground lease and reconstruction of the aircraft apron supports the Town's objectives for the Airport by enhancing the overall value of the Airport with new development and increased revenue. The proposed redevelopment and use of the facilities are consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

The city attorney has reviewed the proposed ground lease form and finds acceptable for the Town's purposes.

RECOMMENDATION:

Administration recommends approval

Attachments

Presentation - Scarborough Ground Lease Resolution - Scarborough Ground Lease Location Map Lease Terms Summary

Proposed Ground Lease Scarborough I Airport, L.P.



Proposal for Consideration and Consent



Scarborough I Airport, LP is requesting a new 40-Year Ground Lease in consideration of reconstruct 22,131 Square Feet of 10" Thick Concrete Aircraft Apron at their sole cost and expense:





ADDISON

- Original Ground Lease first entered and made effective in 1982 with Texas Federal Savings & Loan as Tenant.
 - 480-month / 40-year Term.
 - Lease Tract A Tenant constructed concrete ramp.
 - Lease Tract B improved as parking lot.
 - Lease was assigned four times prior to Scarborough.
- Scarborough I Airport, L.P. acquired 16445 Addison Road (off-airport fee simple property) in 2006
 - Simultaneously acquired and took assignment of Ground Lease.
 - Ground Lease expired February 27, 2022.
 - Town took ownership of improvements.
 - Scarborough continues to use and occupy premises.
 subject to short—term commercial aircraft storage agreement with Town.



Proposed Ground Lease & Key Terms



In consideration of 40-Year Lease; Scarborough will reconstruct 22,131 Square Feet of 10" Thick Concrete Aircraft Apron at their sole cost and expense:

- Meets Airport's current design standard for 75,000 lbs. dual wheel aircraft.
- Engineer's estimated cost is \$512,000.

Summary of Key Lease Terms:

- **Initial Term** is two (2) years.
- **Extended Term Option**: provided Scarborough satisfactorily completes construction of aircraft apron, Term is extended to forty (40) years.
- **Rent:** \$13,165 annually; \$1,097/month (\$.55/square foot of land).
- Adjustment of Rent: To be adjusted every two years based upon change in Consumer Price Index.
- Permitted use: for the storage of <u>airworthy</u> aircraft only.
- **Maintenance**: Tenant's duty to maintain aircraft apron in good condition:
 - Requirement to submit Pavement Inspection Reports every five (5) years over Term.
 - Landlord has right to perform its own Pavement Inspection.
- Title to Improvements: to be owned by Landlord upon completion of construction.

Economic Impact



Overview of Economic Impact					
Ground Rent	\$13,165	\$.55 per SFL; .55 acres (23,937 SFL)			
Fuel Flowage Fee (FFF)	\$0	Not available			
Projected Business Property Tax	\$93,000	Assume \$15 million @ \$.61466/mil			
(Aircraft)		(DCAD est. TOA rate)			
Projected Ad valorem	\$0	Improvements will be city owned			
Leasehold Tax		and held exempt.			
Total Annual Economic Benefit	\$106,165				
Net Cashflow over Lease Term	\$620,000	Ground Rent & FFF Only			
Net Present Value (NPV) of	\$222,000				
Cashflow (disc. @ 6%)	\$222,000				
Tenant's Capital Investment	\$555,000				

Conclusion & Recommendation



The Scarborough I Aviation, L.P. Proposed Ground Lease Achieves:

Council's Strategic Pillars

Innovation in Entrepreneurship & Business

- Milestone #2: Leveraging the new Customs Facility to promote international travel use of the Airport
- Milestone #3: Leverage the use of the Airport to maximize business growth and expansion.

Town's objectives for the Airport

- Enhances overall value of the Airport with new development
- Increases revenue
- Enhances tax base
- Consistent with the 2013 Airport Strategic Plan and 2016 Airport Master Plan Update.

Recommended Action: Staff recommends approval



QUESTIONS?

RESOLUTION NO.	

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A GROUND LEASE BETWEEN THE TOWN OF ADDISON AND SCARBOROUGH I AIRPORT, LP FOR COMMERCIAL AVIATION USE ON APPROXIMATELY .55 ACRES OF IMPROVED LAND LOCATED AT THE ADDISON AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GROUND LEASE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Ground Lease between the Town of Addison and Scarborough I Airport, L.P., a Texas limited partnership, for commercial aviation use on approximately .55 acres of improved land located at the Addison Airport, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Ground Lease.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of *JUNE 2022*.

TOWN OF ADDICON TEVAC

	TOWN OF ADDISON, TEXAS	
	Joe Chow, Mayor	
ATTEST:		
Irma Parker, City Secretary		

EXHIBIT A



Town of Addison

Ground Lease Agreement

Addison Airport

Made Effective :

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STATE OF TEXAS §

COUNTY OF DALLAS §

Summary of Exhibits

- Exhibit 1: Legal Description of Addison Airport
- Exhibit 2: Description of Demised Premises (Property Survey)
- . Exhibit 3: Memorandum of Lease Form
- Exhibit 4: Pavement Inspection Report
- Exhibit 5: Developer Participation Agreement
- Ground Lease Addendum#1
- Ground Lease Addendum #2

GROUND LEASE AGREEMENT

"Agreement") is made and entered into as of , 202_ (the "Effective Date"), by and

among the <u>Town of Addison</u>, <u>Texas</u>, a Texas home-rule municipality (hereinafter sometimes referred to as "<u>Landlord</u>" or the "<u>City</u>", and <u>Scarborough I Airport</u>, <u>L.P.</u>, a Texas limited partnership (hereinafter referred to as "<u>Tenant</u>") (Landlord and Tenant are sometimes referred to herein together as the "<u>Parties</u>").

WITNESSETH:

WHEREAS, the City is the record title owner of the Addison Airport, a description of which is set forth in Exhibit 1 attached hereto and incorporated herein (the "Airport"); and

WHEREAS the Airport is operated and managed by the City or by any person or entity authorized by the City to manage and/or operate the Airport on its behalf (the "Airport Manager"); and

WHEREAS, Landlord and Tenant desires to enter into this Ground Lease Agreement wherein the City leases to Tenant and Tenant leases from the City, a certain portion of the Airport described hereinafter as:

Two parcels of land totaling .549-acres (23,937 square feet) described as Lease Tract No.1, being a certain .508-acre (22,139 square feet) parcel of land, and Lease Tract No. 4, a detached .041-acre (1,798 square feet) parcel of land, both of which are located within Addison Airport and more particularly described respectively in the Boundary Survey prepared by North Texas Surveying, L.L.C.; Job No. 2022-0058 dated May 26, 2022 ("Property Survey") shown in Exhibit 2 attached hereto and incorporated herein by reference (the "Demised Premises"), together with the non-exclusive right to use the Common Facilities as defined in Section 17.

WHEREAS, Landlord and Tenant desire to enter in to this Ground Lease Agreement, which shall commence immediately upon the Effective Date and the simultaneous early termination of that certain Aircraft Storage Rental Agreement dated February 11, 2022, entered into by Landlord and Tenant (the "Prior Agreement"); the Ground Lease shall supersede the Prior Agreement in its entirety without interruption; and

WHEREAS, Tenant is the fee simple owner of the real property located at 16445 Addison Road, which is immediately adjacent to and abutting the Demised Premises described below; Tenant desires to use the Demised Premises in connection with their aeronautical operations located at 16445 Addison Road; and

WHEREAS, Tenant currently holds a valid Airport Access Permit issued by the City granting Tenant the right to access and use the Airport's common facilities from its fee property located at 16445 Addison Road; and

WHEREAS, the Parties hereby acknowledge and agree the foregoing recitals are true and correct and are incorporated herein and made a part hereof statements are true and correct.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

In consideration of and subject to the terms, covenants, and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation) whether now existing or hereafter enacted, adopted or imposed and including, without limitation, any and all grant agreements or grant assurances, the Airport's Rules and Regulations, and the Airport's Minimum Standards (as they may be amended or modified by Landlord from time-to-time); (ii) all restrictive covenants affecting the Demised Premises; (iii) all restrictions, easements, and other encumbrances or matters affecting the Demised Premises. whether of record or not or which could be revealed by a survey of the Demised Premises; and (iv) all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust, or monetary liens affecting the Demised Premises which are not filed of record.

Section 2. Term:

A. Base Term.

Provided Tenant is then not in default beyond the expiration of applicable notice and cure periods under any other lease, license, or agreement with the City, and subject to the early termination of this Agreement and all other provisions of this Lease, the term hereof (the "Base Term") shall commence on the Effective Date, (the "Commencement Date") and shall end the last day of the twenty-fourth (24th) full calendar month following the Commencement Date (the "Expiration Date"). If Tenant is in default beyond the expiration of applicable notice and cure periods under any agreement with the City as of the Commencement Date, this Agreement shall not commence until either (i) Tenant has satisfactorily remedied said default as provided for in the defaulted agreement or, (ii) the City, at its sole discretion, early terminates this Agreement ab inito

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by written notice with neither party having any further duty or obligation to the other under this Agreement.

B. Extended Term Option.

Provided Tenant (i) is not then in default beyond the expiration of applicable notice and cure periods under this Agreement or any other agreement with Landlord, and (ii) achieves Final Completion of the New Land Improvements as defined in Ground Lease Addendum #1 (attached hereto and incorporated herein by reference) on or before the Expiration Date, the Base Term shall be extended so that this Lease will end the last day of the four hundred eightieth (480th) full calendar month following the Commencement Date ("Extended Term Period"). Should Tenant earn and qualify for the Extended Term Period, the Parties hereby mutually agree to execute and record a Memorandum of Ground Lease substantially in the form of Exhibit 3 attached hereto this Ground Lease and incorporated herein by reference, memorializing the modified Base Term ("Extended Term"). Should Tenant fail to complete the New Land Improvements as required pursuant to Ground Lease Addendum #1, Tenant shall not be entitled to this Extended Term causing the Base Term to remain unchanged except for as adjusted, if any, pursuant to Section 4 - Adjustment of Rent.

Section 3. Rent; Security Deposit:

A. Subject to adjustment as set forth below, Tenant shall pay to Landlord, without notice, demand, offset, or deduction, Rent each month over the Term for the Demised Premises as set forth below:

Base Rent:

Tenant agrees to, and shall pay Landlord, annual Rent for the Demised Premises an amount calculated to be the product of \$.55 times the gross square feet of the Demised Premises as determined by the Property Survey (e.g. \$.55 x 23,937 gross square feet = \$13,165.35), which amount shall be paid by Tenant in twelve (12) equal monthly payments of One Thousand Ninety-Seven Dollars and 11/100 (\$1.097.11), on or before the first day of each calendar month, which is subject to adjusted as set forth herein. All Rent is due on or before the first day of each month and is considered delinquent if not received by the tenth (10th) day of each month and subject to the provisions of Section 39.

- For purposes of this Lease, the term "Rent" shall mean Base Rent and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for nonpayment of Base Rent.
- B. Security Deposit:

No Security Deposit required.

Section 4. Adjustment of Rental:

- A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly Rent due under Section 3.A.1. (Base Rent) shall be adjusted as follows:
 - 1. Annual Rent (including Base Rent) shall be adjusted to reflect changes in the Consumers' Price Index All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication Consumer Price Index for All Urban Consumers (CPI-U) for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing as of the Commencement Date. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.
 - 2. Beginning with the first full month following the then applicable Adjustment Date, the annual Rent (including the Base Rent)) shall be adjusted so that it equals the product of the annual Rent (including the Base Rent) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the "Adjusted Rental"), but in no event shall such annual Rent (including the Base Rent) ever be decreased below the Base Rent set forth in Section 3.A.1.
 - If the Consumer Price Index is unavailable for whatever reason for the
 computations set forth hereinabove, another index approximating the Consumer Price
 Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

Section 5. Use of Demised Premises:

A. Permitted Uses:

- For the storage of air-worthy aircraft and equipment used in connection with Tenant's aeronautical operations;
- 2. Incidental support and services in connection with aircraft stored or based at the Leased Premises, including light maintenance and repair.

B. Prohibited or Restricted Use of Demised Premises:

The following uses are expressly prohibited without Landlord's prior written consent:

- Retail services including food sales, alcoholic beverages sales, and pilot-supply sales; barber and valet services; newsstands and gifts; and
- Storage of non-airworthy aircraft for a period greater than fourteen (14) consecutive days without the prior written consent of the Airport Manager.
- Any illegal purpose or any other activity (federal, state, county, and municipal laws, rules, regulations, standards, and policies) that, in Landlord's reasonable opinion, would

create a nuisance, unreasonably disturb other tenants of the Airport, or which may cause an increase in Landlord's insurance costs, whether such increased costs are actually incurred or not; and

- Aviation fueling operations of any kind without a valid fuel dispensing permit issued by the Town of Addison.
- Any non-aeronautical use or purpose including, but not limited to, the parking of vehicles not required for Tenant's aeronautical operations.
- C. [Intentionally Omitted].
- D. Tenant acknowledges that Landlord is bound by the terms and conditions of all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to knowingly take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.
- E. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that to the extent that the Demised Premises are used for commercial purposes that (i) no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.
- F. To the extent the Demised Premises is used for commercial purposes, Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Section 6. Land Improvements:

A. Existing Land Improvements:

For the purpose of this Lease, the term "Existing Land Improvements" shall mean those real property improvements, if any, made to the Demised Premises in their "as is", "where is" condition together with all faults and patent and latent defects on or before the Effective Date of

this Agreement, including but not limited, to the existing paved aircraft parking apron in its used and depreciated condition, which Tenant accepts pursuant to Section 7 below.

B. New Land Improvements:

See Ground Lease Addendum #1 attached hereto and incorporated herein by reference.

C. Future Land Improvements:

Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other Future Land Improvements (as defined in Ground Lease Addendum #2) upon the Demised Premises without the prior written consent of Landlord. See <u>Ground Lease Addendum #2</u> attached hereto and incorporated herein by reference.

D. Land Improvements:

The term "Land Improvements" as used herein shall mean all real property improvements constructed, erected, affixed or other made on or to the Demised Premises including but not limited to the Existing Land Improvements, New Land Improvements and All Future Land Improvements defined above during the Term, but excluding any personal property and trade fixtures owned by Tenant (including aircraft stored on the Demised Premises).

Section 7. Acceptance of Demised Premises:

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE. DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER. INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN (OR WILL BE) ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS

AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY. PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in <u>Section 32</u>.

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

A. Tenant at Tenant's sole cost and expense shall obtain all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, 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) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) all grant agreements or grant assurances now existing or as hereafter agreed to, adopted, or imposed.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (as of the Effective Date, the Airport Manager is as set forth in the Recitals, above, but the Airport Manager may be changed or modified by the City, and for purposes of this Lease the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or

operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Land Improvements pursuant to the Design Plan.

B. Tenant shall always comply with all noise abatement standards at the Airport, shall notify any employee, guest or invitee of Tenant, including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

Section 9. Assignment; Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:

Without the prior written consent of Landlord (which consent maybe granted or withheld in Landlord's sole and absolute discretion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) nor sublet in whole or in part any portion of the Demised Premises, and 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 Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Lease (which, in the case of a sublease, may be limited to the applicable obligations delegated to the subtenant). No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and 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. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or

proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.

- B. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting aircraft storage only, provided that each sublease is evidenced by written agreement, signed, and executed by Tenant and sublessee and fairly states:
 - I. In the event of any conflict between the terms of this Lease and the terms of the sublease, the terms of this Lease shall control; provided, that the subtenant shall not be required to pay Rent under this Lease and shall only be required to perform obligations under this Lease which are delegated to the subtenant under its sublease;
 - Such subletting shall not constitute a novation;
 - 3. In the event of occurrence of an event of default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such subtenant all Rents becoming due under such subletting and apply such Rent against any sums due to Landlord hereunder:
 - Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease;
 - 5. Any such sublease is to automatically terminate upon termination of this Lease notwithstanding any other provision of the sublease to the contrary;
 - Landlord shall have no responsibility or obligation for the performance by Tenant
 of its obligations under the sublease;

Neither Landlord's consent to a sublease, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee. Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any violation of any terms and conditions of this Lease by a sublessee may constitute a default under this Lease.

C. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include, in addition to any other information or materials that Landlord may request: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) financial statements or other evidence of the proposed assignee to perform its obligations under this Lease.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date (or any assignee of Tenant on the date of such assignment), or partnerships or trusts formed by such persons for estate planning purposes, or affiliates of any such persons, cease to own or have voting control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification confirming that no such assignment has occurred without Landlord's consent, if such consent is required hereunder. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or otherwise.

- D. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the New Land Improvements described in Section 6, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the Rent due hereunder and otherwise fully perform the terms and conditions of this Lease.
- E. All mortgages or deeds of trust whereby Tenant mortgages the leasehold estate of Tenant created hereby shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said mortgages or deeds of trust.
- F. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate

this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

- Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee or its successors and assigns after foreclosure or transfer in lieu of foreclosure shall not and does not have the right and shall not and does not have the power to assign (as defined in subsection A. of this Section above) this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgage of such proposed leasehold mortgagee.
- H. Upon request by Landlord, Tenant shall provide to Landlord a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes a default of this Lease, subject to notice and cure as provided in Section 23(B).

Section 10. Property Taxes and Assessments:

Tenant shall pay, before they become delinquent, all property taxes or assessments, and any other governmental charges, fees, or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to affect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense,

Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof. Notwithstanding the foregoing, Tenant shall not contest the determination that the buildings and/or improvements are subject to taxation. If a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the Rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

Section 11. Maintenance and Repair of Demised Premises:

- A. Tenant shall, throughout the Term hereof, maintain in good repair and in a first class condition as set forth herein and all applicable ordinances, codes, rules and regulations of, or adopted by the Town of Addison, Texas all the Demised Premises and all improvements, fixtures, equipment and personal property on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition in accordance with the construction and/or maintenance standards set forth herein and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment, if any, situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised Premises.
- B. Provided Tenant is entitled to the Extended Term set forth in Section 2.B above, Tenant shall deliver to Landlord within sixty (60) days of the fifth (5th) anniversary of the Commencement Date of this Agreement, a completed and signed and dated Pavement Inspection Report ("PIR") (if performed by licensed professional engineer, the PIR is to be signed and stamped by the licensed engineered) generally in the form and content as given in Exhibit 4 attached hereto and incorporated herein by reference. The PIR may be performed by Tenant (or employee of Tenant) or, a professionally qualified licensed engineer (Landlord may, at its sole discretion, not accept a PIR performed by a third-party who is not a licensed engineer). It is the intent herein for Tenant to establish and perform routine inspections of the Land Improvements to ensure each element or feature is thoroughly inspected, potential problem areas identified, and proper corrective measures are recommended and implemented by Tenant:
 - 1. The PIR shall be cumulative over the Term evidencing each condition found and reported, the recommended remedy, the maintenance action taken and when, and the estimated cost of said remedy. Thereafter, Tenant shall update the PIR every five years (within sixty-days thereof) and deliver same to Landlord for its records.
 - If deferred pavement maintenance is identified (or any other substandard condition)
 and reported, Landlord may make written demand for Tenant to remedy the reported
 deferred condition. Should Tenant fail to timely remedy the condition set forth in

Landlord's demand notice, Landlord reserves the right but not the obligation to (i) make the repairs itself and invoice Tenant for the cost of the repairs or, (ii) give notice to Tenant of its default of this Lease; pursuant to Section 23 – Default By Tenant.

- Tenant's failure to timely deliver the PIR to Landlord as required herein shall constitute a default under <u>Section 23</u> of this Agreement if not cured within the cure periods set forth herein.
- 4. Notwithstanding the foregoing, over the Term Landlord reserves the right to conduct its own PIR performed by a professionally qualified licensed engineer who is not an employee of the Landlord and is not compensated on a contingent fee or percentage basis. If deferred pavement maintenance or other substandard conditions are identified and reported in Landlord's PIR, Landlord may elect to provide Tenant a copy of the PIR and make written demand for (i) Tenant to remedy the reported conditions within a commercially reasonable period of time but in no event greater than six (6) months of Tenant's receipt of said notice, and (ii) reimburse Landlord for its out-of-pocket costs for the PIR (provided, that Tenant shall not be required to make such reimbursement more than one time in any 24 month period or if Tenant has provided a PIR to Landlord within the 24 month period prior to Landlord's PIR). Tenant's failure to remedy the reported conditions as required and or reimburse Landlord for its out-of-pocket costs are defaults of the Ground Lease pursuant to Section 23 of this Agreement if not cured within the cure periods set forth therein.

For the purposes of this Section 11, the term "deferred pavement maintenance" means physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property.

Section 12. Alterations, Additions, and Improvements:

After completion of the New Land Improvements described in <u>Section 6</u>, Tenant shall not make any alterations, additions, modifications, or improvements to the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a good and workmanlike manner, shall comply with all the standards and requirements set out above, and in <u>Section 6</u> (including applicable indemnity obligations) and <u>Section 8</u>, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in <u>Section 6</u>).

Section 13. Insurance and Bonds:

- A. At all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:
 - 1. If applicable, insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism, and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be affected.
 - 2. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000.00 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000.00 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
 - 3. Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.
 - 4. If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding, or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.
 - 5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
 - Hangarkeepers' Legal Liability insurance, at limits of \$1,000,000.00 peroccurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft

belonging to a third-party on the Demised Premises, or if Tenant is otherwise involved in any operation on the Demised Premises in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

- 7. Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000.00 and medical expense coverage with a limit of \$5,000.00 for any one person.
- 8. Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000.00 for bodily injury and property damage.
- 9. If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by the City, Tenant shall maintain a minimum of \$1,000,000.00 in Pollution Liability Insurance coverage, which may be satisfied through sudden and accidental pollution coverage under Tenant's commercial general liability policy.
- 10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.
- B. Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:
 - The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees, and agents shall be named as additional insureds or loss payees except with respect to the professional liability policies and workers compensation insurance; and
 - 2. All insurance policies which name the Town of Addison, Texas, and the Airport Manager (and their respective past and present officials, officers, employees, and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance; and
 - A waiver of subrogation in favor of the Town of Addison, Texas, and the Airport Manager (and their respective past and present officials, officers, employees, and agents) shall be contained in each policy required herein; and
 - All insurance policies shall be endorsed to the effect that the Town of Addison,
 Texas, and the Airport Manager will receive at least thirty (30) days written notice prior to

cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.); and

- All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages; and
- All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager; and
- Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and
- 8. Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:
 - 1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and
 - 2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.
- D. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

Section 14. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the Land Improvements or any other improvements on or at the Demised Premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.
- B. In case of any damage to or destruction of any improvements (including the Land Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure,

equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that Landlord's approval shall not be required in connection with Restoration pursuant to plans previously approved by Landlord. All such design and construction shall comply with other sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6, 8, and 13 hereof.

- C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with Sections 6 and 21 hereof and other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority, and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.
- **D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ("Net Insurance Proceeds")) shall be applied as follows:
 - 1. Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel, title commitment or similar report acceptable to Landlord confirming that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
 - 2. Upon receipt by Landlord of the certificate and opinion of counsel, title commitment or report required by the foregoing clauses (i) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.
- E. Subject to extension for delays caused by Force Majeure, in the event Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, and Tenant does not commence to cure such failure within the period

set forth below, such failure by Tenant shall be an Event of Default by Tenant pursuant to notice and cure in Section 23.B of this Lease. If an Event of Default by Tenant occurs pursuant to the preceding sentence and is continuing, Landlord shall have the right, but not the obligation, to commence or complete Restoration as described hereinafter. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

F. In the event of termination of this Lease by Landlord because of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the Term of this Lease. All insurance proceeds, if any are remaining and/or available subject to another secured interest on the property, shall be paid to the Landlord.

Section 15. Condemnation:

- A. If during the Term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, as determined by Tenant, Tenant shall be entitled to terminate this Lease as of the date that said condemning authority takes possession of the Demised 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 Demised Premises is susceptible to efficient and economic occupation and operation by Tenant, as determined 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 payment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The Rental adjustment called for herein shall not commence until said condemning authority takes possession of the condemned portion of the Demised Premises.
- C. If this Lease is not terminated pursuant to <u>Section 15.A.</u>, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and

Tenant, as their interest may appear. If this Lease is terminated pursuant to <u>Section 15.A</u>, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

Section 16. Utilities:

Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the Term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities:

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 Demised Premises, other Airport installations, and all other reasonable services which may be provided with or without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall always be under the exclusive control, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

Section 18. Rules and Regulations:

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

Section 19. Signs and Equipment:

After first securing Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and

other equipment and facilities in or on the Demised 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, and regulations, including the City 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).

Section 20. Landlord's Right of Entry:

Landlord and Landlord's authorized representatives shall have the right, during normal business hours, and upon no less than 48 hours' prior written notice (except in the case of emergency threatening life, safety or property) to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose. No such entry by Landlord shall unreasonably interfere with the conduct of Tenant's operations at the Demised Premises.

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 Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity and Exculpation:

A. Exculpation.

Except and to the extent caused by the gross negligence or intentional misconduct of Landlord or any party acting on its behalf, 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 its elected officials, officers, employees, agents, representatives, and volunteers of the **Town of Addison**, **Texas**, individually or collectively, in both their official and private capacities (the **Town of Addison**, **Texas**, and the elected officials, the officers, employees, representatives, and volunteers of the **Town of Addison**, Texas each being an "Addison Person" and collectively the "Addison Persons") and (ii) Airport

Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and agents each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the DEMISED Premises, whether directly or indirectly, (collectively for purposes of this subparagraph B, "Damages"), that result from, relate to, or arise out of, in whole or in part, from:

- 1. any condition of the DEMISED PREMISES caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Premises under express or implied invitation of Tenant during the Term (collectively, "Tenant Persons"); and
- 2. any construction on or repair to the DEMISED Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling; and
- 3. representations or warranties by Tenant under this Lease; and/or
- 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 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; PROVIDED THAT UNDER NO CIRCUMSTANCE SHALL THE SAME APPLY TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE LANDLORD OR ANY PARTY ACTING ON ITS BEHALF.

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.

C. 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 Section 21) and Airport Manager and all other Manager Persons (as the term "Manager Persons" is defined in subparagraph B. of this Section 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 Section 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 Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) any loss or damage that may result from or 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, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

C. The provisions of this <u>Section 21</u> shall survive the expiration or termination of this Lease.

Section 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 directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised 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 (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws:

Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws"); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date or that are caused by any party other than Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant (the "Tenant Party(ies)"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws, to the extent provided in the preceding sentence. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under any Tenant Party during the Term of this Lease, Tenant shall, at Tenant's own 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 Demised Premises and/or any portion of the Common Facilities and shall sign the affidavits promptly when requested to do so by Landlord.

TENANT'S FURTHER INDEMNITY OBLIGATION. Tenant shall indemnify, defend, save and hold harmless Landlord and all other Landlord persons, and airport manager and all other manager persons, from and against, and reimburse Landlord and all other Landlord persons, and airport manager and all other manager persons, for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings and losses of whatever kind or nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs (collectively for purposes of this subsection, "damages") and all actions of any kind arising out of or in any way connected with the following, to the extent caused by Tenant or any Tenant Party, (i) the generation, installation, storage, use, treatment, transporting, disposal or discharge of hazardous materials in or on the demised premises and/or any portion of the airport, including the common facilities, or any property adjacent to the airport, by Tenant or any Tenant Party, and (ii) all fines. suits, procedures, claims and actions of any kind arising out of Tenant's failure to provide all information, make all submissions and take all steps required by the authority under the cleanup laws or any other environmental law, rule, standard, regulation, or policy. 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 [but not the gross negligence or willful misconduct] of the Landlord, any other Landlord person, airport manager, or any other manager person, or by any act or omission of Landlord, any other Landlord person, airport manager, or any other manager person that may give rise to strict liability of any kind. However, to the extent gross negligence and/or willful misconduct are alleged simultaneously with claims requiring defense and indemnity herein, Tenant shall defend all claims alleged against the Landlord, and any other Landlord person, and airport manager, and any other manager person. Tenant's liability under this indemnity obligation shall be reduced by that portion of the total amount of the damages (excluding defense fees and costs) equal to the indemnified person's or indemnified persons' 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 indemnified person's or indemnified persons' defense costs and attorneys' fees shall be reduced by a portion of the defense costs and attorneys fees equal to the indemnified person's or indemnified persons' proportionate share of the negligence or conduct that would give rise to strict liability of any kind, that caused the loss. 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 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. Environmental Site Assessments:

Prior to the Commencement Date of this Lease, the Tenant, at Tenant's sole cost and expense, shall be entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If the Phase I ESA indicates the likely presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled, as its sole remedy, to disaffirm this Lease, in which case this Lease shall become null and void and no further obligation shall be borne by either party hereto. A copy of a Phase I ESA and Phase II ESA, if any, shall be delivered promptly to Landlord upon completion.

Section 23. Default by Tenant:

Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an "Event of Default" (herein so called) by Tenant under this Lease:

- A. Failure of Tenant to make any payment of Rent payable to Landlord 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 (the "10-day Grace Period") and such failure shall not be cured within ten (10) days after written notice thereof (the "Cure Period") to Tenant (which Cure Period may overlap, in whole or in part, the 10 day Grace Period).
- B. Failure to pay or cause to be paid Taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is obligated to pay under the Lease and such failure shall continue for a period of thirty (30) days after written notice thereof to Tenant.
- C. Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of Rent, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A and B of this Section 23) and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant setting forth such default; provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then Tenant shall advise Landlord in writing of the same, such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty (60) days except in the case of Force Majeure, in which event the Force Majeure provisions shall apply) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and has commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

- D. Insolvency or the making of a transfer in fraud of creditors as determined by a court of law with jurisdiction over Tenant, or the making of a general assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.
- E. Filing of a petition under any section or chapter of the Bankruptcy Code, 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 that is not dismissed within ninety (90) days.
- F. Appointment of a receiver or trustee for all or substantially all the assets of Tenant or any guarantor of Tenant's obligations.
- G. Abandonment or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of ninety (90) consecutive days.
- H. Tenant is in default of any other lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

Section 24. Remedies of Landlord:

Upon the occurrence and during the continuance of any uncured Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:

- A. Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant. Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in subsection B. of this Section.
- B. Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.
 - C. Recover unpaid Rent and any Damages (as defined below);
- D. Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.

- E. Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.
- F. Sue for eviction, specific enforcement, equitable relief, Rent, damages, or any other available remedy.
- G. INTENTIONALLY DELETED (reserved for the Application of a Security Deposit, if any).
- H. Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.
- Withhold or suspend any payment that this Lease would otherwise require Landlord to make.
- J. Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).

For purposes of this Section, "<u>Damages</u>" includes, without limitation, all actual, incidental, and or consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises, including, without limitation, the costs of brokerage commissions and cleaning, make-ready, or repairing the Demised Premises for a substitute tenant or tenants, (D) collecting any money owed by Tenant or a substitute tenant, I repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or 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.

Section 25. Default by Landlord:

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential 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 recovery or entitle Tenant to take any action whatsoever with regard to the Demised Premises or Landlord until (a) 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 or (b) in case the case of any default by Landlord hereunder which prevents Tenant from accessing or utilizing the Demised Premises (or any material part thereof) for its intended purpose for a period of 24 hours after Tenant has provided notice to Landlord of the same (excepting, however, to the extent the same is caused by an emergency threatening life, safety or property but only to the extent Landlord is continuously using commercially reasonable efforts to remedy the same). Should Landlord fail to cure such default within said cure period, or within said additional reasonable period, Tenant shall have the right as its sole and exclusive remedy to:

- A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding Rental payment(s) due by Tenant to Landlord hereunder;
- B. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and sue Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or
 - D. Terminate this Lease upon written notice of the same to Landlord.

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.

Section 26. Mitigation of Damages:

A. In conjunction with any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than ninety (90) days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24).

Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:

- Landlord will have no obligation to solicit or entertain negotiations with any other
 prospective tenants of the Demised Premises until and unless Landlord obtains full and
 complete possession of the Demised Premises, including without limitation, the final and
 unappealable legal right to relet the Demised Premises free of any claim of Tenant.
- Landlord will not be obligated to offer the Demised Premises to a prospective tenant
 when other premises suitable for that prospective tenant's use are (or soon will be) available
 in any other premises located at Addison Airport.
- 3. Landlord will not have any obligation to lease the Demised Premises for any amount of rent less than the current market rent for similar space at Addison Airport (or if no similar space is available, the current fair market rent prevailing for similar space in comparable properties in the same market area as the Demised Premises) nor shall Landlord be obligated to enter a new lease under any terms or conditions that are unacceptable to Landlord.
- Landlord will not be obligated to enter any lease with any prospective tenant whose
 reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment
 and opinion.
- 5. Landlord will not be obligated to enter a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first-class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.
- Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant,

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and TENANT HEREBY WAIVES AND RELEASES, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No Rent collected from a substitute tenant for any month more than the Rent due under the Lease for that month will be credited or offset against unpaid Rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. To the fullest extent permitted by LAW, Tenant waives any

OTHER OBLIGATION BY LANDLORD TO MITIGATE ITS DAMAGES AFTER TENANT FAILS TO PAY RENT OR VACATES OR ABANDONS THE PREMISES.

B. Tenant's right to seek actual damages because of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. 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 Demised Premises, which loss or damage is covered by valid and collectible casualty, 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.

Section 28. Title to Improvements:

- A. Any and all real property improvements made on or to the Demised Premises, including, without limitation, the Existing Land Improvements, New Land Improvements (subject to their Final Completion and acceptance by Landlord as provided for in Addendum #1), shall be owned and title by Landlord.
- B. Upon the termination of this Agreement, whether by expiration of the Term hereof or by reason of default on the part of Tenant, or for any other reason whatsoever (i) Tenant shall deliver up to Landlord the Demised Premises clean and free of trash and debris, in a broom swept condition, in good repair and condition in accordance to Section 11 herein, as amended or modified, with all fixtures, if any, situated on the Demised Premises delivered in good working order, reasonable wear and tear excepted, and (ii) unless Tenant is in default at the time, Tenant shall have the right to remove all personal property (including aircraft stored on the Demised Premises) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises, including any Land Improvements, caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense.
- C. Upon such termination, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the expiration or termination of this Agreement and giving the effective date of said termination or expiration date or Extended Term Expiration Date.

D. Upon the expiration or early termination of this Lease, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the termination of this Agreement and giving the effective date of said termination or expiration date.

Section 29. Mechanics' and Materialmen's Liens; Lien for Rent; Waiver of Landlord Liens:

Tenant agrees to defend, indemnify and hold harmless to the full extent as provided in this Lease, THE INDEMNIFIED Persons from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 39 as additional Rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises unless a shorter period of time is dictated by applicable law.

Section 30. Intentionally Deleted.

Section 31. Quiet Enjoyment and Subordination:

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants, and agreements herein contained, shall (subject to all the terms and conditions of this Lease) peaceably and quietly have, hold, and enjoy the Demised Premises during the full Term of this Lease. 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 hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express condition that the lienholder executes a commercially reasonable subordination non-disturbance attornment ("SNDA") in which it is acknowledged 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 on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect as a direct lease between Tenant and the mortgagee or purchaser at foreclosure. 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 the foreclosure of such mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis:

The Rent provided for in this Lease shall be a net return to Landlord for the Term of this Lease, free of any loss, expenses, or charges with respect to the Demised Premises, including, without

limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over:

Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised 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 twenty-five percent (125%) of the Base Rent paid for the last month of the Term of this Lease.

Section 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. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 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 Demised 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 Demised Premises.

Section 36. Attorneys' Fees:

If, on account of any breach or default by either Party to this Lease, it shall become necessary for either Party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

Section 37. Intentionally Removed.

Section 38. Estoppel Certificates:

Landlord and Tenant agree that from time to time, upon not less than ten (10) business days' prior written request by the other, it will deliver to the other an estoppel certificate stating:

- That this Ground Lease is in full force and effect and is unmodified except as set forth in said estoppel certificate.
- A true and correct and complete copy of the Lease with all amendments, assignments and modifications to the Lease are attached thereto (if so requested).
- There are no other agreements except as stated therein between Landlord and Tenant concerning the Demised Premises or otherwise affecting the Lease.
- Affirming the Commencement Date and scheduled Expiration Date, unless earlier terminated.
- The amount and status of the Rent and other amounts due under this Ground Lease as of the date of certification.
- Whether this Ground Lease has been modified or amended and, if so, describing with specificity the modifications or amendments.
- Schedule of all subleases then in effect and a true and correct copy of each sublease, if so requested.
- 8. Any Mortgage in effect encumbering the Demised Premises
- 9. That to the party's current knowledge, there is no default or breach of this Ground Lease or any matter exists that, with the passage of time, will result in a default or breach, and describing with specificity the nature of the default or breach.
- 10. Amount of any Security Deposit, Tenant has on account with Landlord, if any.
- 11. Tenant has not paid rent more than one (1) year in advance.

Section 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 at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) 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 cash, 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. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

Section 40. 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"), and Tenant agrees and consents to the same. 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 Demised 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 limit or obstruct access to the Demised Premises and/or to the Airport; (ii) releases, waives and discharges Landlord and Manager, and Landlord Persons and Manager Persons, 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 Demised 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 any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section 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 Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Independent Contractor:

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

Section 42. Force Majeure:

Neither party shall be deemed in default of this Agreement for any delay or failure to perform any obligation hereunder (other than a payment obligation) so long as and to the extent to which any delay or failure in the performance of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event (defined below); provided that the party prevented or delayed in performing an obligation under this Agreement due to a Force Majeure Event shall notify the other party (to be confirmed in writing within seventy-two (72) hours of the inception of the delay) of the occurrence of a Force Majeure Event and shall describe, in reasonable detail, the circumstances constituting the Force Majeure Event and the obligation and/or performance thereby delayed or prevented. The party claiming that a Force Majeure Event has occurred shall continue to use commercially reasonable efforts to mitigate the impact or consequence of the event on the other party and to recommence performance whenever and to whatever extent possible without unreasonable delay. The party affected by the event shall provide the other party with daily updates (and more frequent updates if requested) as to the status of its efforts to recommence performance and written notice upon conclusion of the Force Majeure Event. A Force Majeure Event occurs when either party is unable, other than as may arise from its own negligence or willful misconduct, to perform its

obligations under the terms of this Agreement (excluding Tenant's timely payment of Rent or any other payment obligation to Landlord hereunder) because of acts of God, military war, invasion, insurrection, riot, strike, lockout, inability to obtain labor or materials or reasonable substitutes therefore, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises (only in such cases and solely to the extent that the party's performance is frustrated as a direct result of the same), or other cause reasonably beyond its control, whether foreseen or unforeseen, or anticipated or otherwise.

Section 43. 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.

Section 44. 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. The terms "day", "week,", "month", "year" or any plural form of said terms shall be construed to mean on a calendar basis unless expressly stated otherwise.

Section 45. Captions:

The captions or headings, sections, 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.

Section 46. Successors; No Third-Party Beneficiaries; No Waiver of Immunity; No Tax Representation:

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.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability:

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give full effect (to the extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the Term of this Lease does not exceed 40 years (480 months); if it should be determined that the Term of this Lease exceeds such period, the Term hereof shall be reformed to make the Term hereof not exceed such period.

Section 48. Notices:

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001 Email: wpierson@addisontx.gov

Town of Addison, Texas c/o Assistant Director – Real Estate 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Email: bill.dyer@addisonairport.net

TO TENANT:

Scarborough Airport I, LP 16380 Addison Road Addison, Texas 75001 Attn: Mr. James R. Feagin Email: jfeagin@landmarkinterests.com

Section 49. 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.

Section 50. 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. This Lease may be executed and delivered by electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

Section 51. Consent; "Includes" and "Including"; Recitals:

Where Landlord's consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

Section 52. Governing Law and Venue:

This Lease and all the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choose of laws rules of any jurisdiction. All suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

Section 53. Survivability of Rights and Remedies:

Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the Term hereof shall survive the cancellation, expiration or termination of this Lease. Notwithstanding anything to the contrary, the Parties obligations and liabilities of the Parties pursuant Sections 6, 21, 22, 28 shall survive the expiration or earlier termination of this Lease as deemed necessary for the enforcement of the Parties rights and obligations thereunder.

Section 54. Entire Agreement and Amendments; Authorized Persons:

This Lease, consisting of fifty-four (54) Sections and Exhibits 1, 2, 3, 4 and 5 attached hereto, together with Ground Lease Addendum #1 and Ground Lease Addendum #2 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.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

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

TEN	ANT:	LANDLORD:
	RBOROUGH AIRPORT I, LP, sas limited partnership	TOWN OF ADDISON, TEXAS
Ву:	Scarborough I Airport GP, LLC, a Texas limited liability company, its general partner	Wesley S. Pierson, City Manager

James R. Feagin, Manager

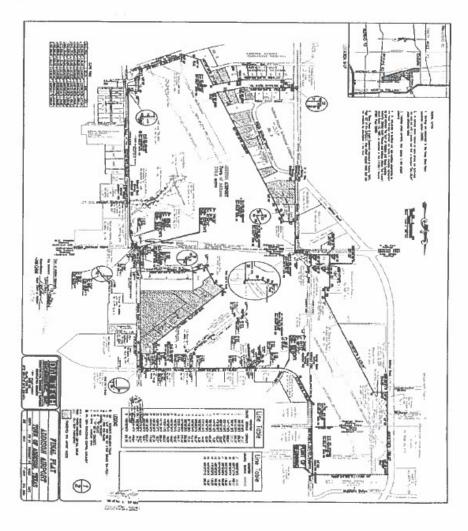
ACKNOWLEDGEMENTS

GIVEN UNDER MY , 2022.	nowledged before me on
Wesley S. Pierson, City Manage on behalf of the said municipality	nowledged before me on, 2022 by of the Town of Addison, Texas, a Texas home-rule municipality, AND AND SEAL OF OFFICE, this the day of
Irma G. Parker Notary Public, State of Texas Comm. Expires 08-07-2022 Notary ID 4770064	Notary Public, State of Texas
41	0550-2804

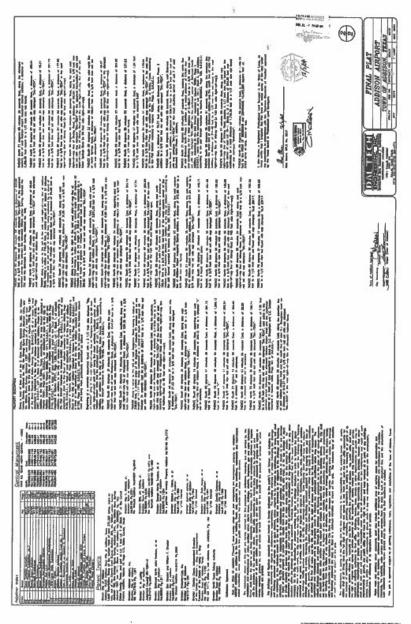
Town of Addison, Texas Resolution No. ____

Exhibit 1 - Legal Description of Addison Airport

The property platted pursuant to the Final Plat, Addison Airport, recorded as Instrument #200503420292 in Dallas County, Texas Official Public Records as depicted on the following two pages.



Scarborough Airport I, LP Ground Lease Exhibit I



Scarborough Airport I, LP Ground Lease Exhibit 1

Page 2

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Exhibit 2 - Demised Premises Property Survey

Scarborough Airport I, LP Ground Lease Exhibit 2

Page 1

Lease Tract No. 1 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T.

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being all of that called Lease Tract No. 1, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said tract being more particularly described, as follows:

BEGINNING at an "X" cut in concrete found (Grid Coordinate: Northing=7,041,461.90', Easting=2,480,265.52) for the southeasterly corner Lease Tract 1, same being an angle point of said ADDISION AIRPORT, said corner also being the most northerly northwest corner of the VAN-HOFF SUBDIVISION, an addition to the Town of Addison, as recorded in Volume 79122, Page 1831, M.R.D.C.T., said corner also being the most westerly southwest corner of;

THENCE North 68°50'41" West, over and across said ADDISION AIRPORT, same being the southerly line of said Lease Tract No. 1, a distance of 161.58' to a 1/2" iron rod found for the southwesterly corner of said Least Tract 1;

THENCE North 00° 34'31" West, along the westerly line of said Lease Tract No. 1, same being over and across said ADDISION AIRPORT, a distance of 117.57 to a p.k. nail found for the northwesterly corner of said Lease Tract No. 1, same being in the southerly line of Lease Tract No. 2, as shown on said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 89°25'29" East, along the common line between said Lease Tract No. 1 and Lease Tract No. 2, a distance of 150.13' to a p.k. nail found for the northeasterly corner of said Lease Tract No. 1, same being the southeasterly corner of Lease Tract No. 2, said corner being in the westerly line of said BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), said corner also being in an easterly line of said ADDISION AIRPORT;

THENCE South 00°33'53" East, along the common line between Lease Tract No. 1 and BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 177.39' to the POINT OF BEGINNING and containing 22,139 square feet or 0.508 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 2

Lease Tract No. 4 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being a part of that called Lease Tract No. 3, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., and being all of that called 0.041 acre tract, described in deed to the City of Addison, Texas, as recorded in Volume 84214, Page 773, of the Deed Records, Dallas County, Texas (D.R.D.C.T.), said tract being more particularly described, as follows:

BEGINNING at a 1/2" iron rod found with red plastic cap stamped "DAL-TEC" found (Gird Coordinate: Northing=7,041,666.08, Easting=2,480,463.33') for the southeasterly corner of said Lease Tract No. 3, same being the southeasterly corner of said 0.041 acre tract, said corner also being the northeasterly corner of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said corner also being in the westerly monumented line of Addison Road;

THENCE South 89°26'29" West, along the southerly line of said 0.041 acre tract, same being the southerly line of said Lease Tract No. 3, said corner also being the northerly line of BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 199.80' to a p.k. nail found for the southwesterly corner of said 0.041 acre tract, same being the southwesterly corner of said Lease Tract No. 3, said corner also being in the easterly line of Lease Tract No. 2, of said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 00°37'52" West, along the westerly line of said 0.041 acre tract and said Lease Tract No. 3, same being the easterly line of said Lease Tract No. 2, a distance of 9.00' to a p.k. nail found for the northwesterly corner of said 0.041 acre tract;

THENCE North 89°26'29" East, along the northerly line of said 0.041 acre tract, same being over and across said Lease Tract No. 3, a distance of 199.81' to an "X" cut found for the northeasterly corner of said 0.041 acre tract, same being in the easterly line of said Lease Tract No. 3, same being in the westerly monumented line of Addison Road:

THENCE South 00°34'00" East, along the westerly monumented line of said Addition Road, same being the easterly line of said 0.041 acre tract and said Lease Tract No. 3, a distance of 9.00' to the POINT OF BEGINNING and containing 1,798 square feet or 0.041 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit2

Exhibit 3 - Memorandum of Lease Form

AFTER RECORDING RETURN TO: Addison Airport Management c/o Real Estate Manager 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001

MEMORANDUM OF LEASE
This Memorandum of Lease is dated theday of, 20, and is executed by and between the Town of Addison, Texas, a home-rule municipality ("Landlord"), and, a
WHEREAS, the City is the record title owner of the Addison Airport, a description of which
WHEREAS, Landlord and Tenant first enter into that certain Ground Lease Agreement made effective (" <u>Effective Date</u> ") dated wherein the City leases to Tenant and Tenant leases from the City (" <u>Ground Lease</u> "), a certain portion of the Airport described hereinafter as:
Two parcels of land totaling .549-acres (23,937 square feet) described as Lease Tract No.1, being a certain .508-acre (22,139 square feet) parcel of land, and Lease Tract No. 4, a detached .041-acre (1,798 square feet) parcel of land, both of which are located within Addison Airport and more particularly described respectively in the Boundary Survey prepared by North Texas Surveying, L.L.C.; Job No. 2022-0058 dated May 26, 2022 ("Property Survey") shown in Exhibit A attached hereto and incorporated herein by reference (the "Demised Premises"), together with the non-exclusive right to use the Common Facilities as defined in Section 17.
WHEREAS, pursuant to the Ground Lease, provided Tenant (i) is not in default of the Ground Lease or any other agreement with Landlord beyond the expiration of applicable notice and cure periods, and (ii) achieves Final Completion of the New Land Improvements as defined in Ground Lease Addendum #1 of the Ground Lease on or before the Expiration Date, the Base Term shall be extended so that this Lease will end to the last day of the four-hundredth and eightieth (480the) full calendar month following the Commencement Date ("Extended Term Period"); and
Scarborough Airport I, LP Ground Lease Exhibit 3 Page 1

Town of Addison, Texas Resolution No.

NOW, LET BE KNOWN, the Ground Lease expire : no other amendments	Base Term is hereby extended to now or modifications were made to the
Ground Lease.	of modifications were made to the
This Memorandum of Lease is solely for record to construed to alter, modify, expand, diminish, or supplease, as amended and/or modified. In the event of any of this Memorandum of Lease and the provisions of the dround Lease shall governed and Tenant thercunder. Upon the expiration or earlier termination of the gree that they shall execute and record a Memorandum or recording and notice purposes. IN WITNESS WHEREOF, the undersigned	plement the provisions of the Ground inconsistency between the provisions the Ground Lease, as amended and/or vern, including all rights and duties of the Ground Lease, Landlord and Tenant am of Ground Lease Expiration solely
ease this day of	, 202
SCARBOROUGH AIRPORT I, LP, a Texas limited partnership By: Scarborough I Airport GP, LLC, a Texas limited liability company, its general partner By: James R. Feagin, Mariager	LANDLORD: TOWN OF ADDISON, TEXAS By: Wesley S. Pierson, City Manager
earborough Airport I, LP	

WHEREAS, no default by Tenant exists under the Ground Lease and Tenant has

ACKNOWLEDGEMENT

STATE OF TEXAS	§
COUNTY OF DALLAS	§ §
James R. Feagin, Manager	acknowledged before me on June 21, 2022 by of Scarborough I Airport GP, LLC, a Texas limited liability Scarborough Airport I, LP, a Texas Limited Partnership, on
	Y HAND AND SEAL OF OFFICE this the day of
	Bruce Damon Browne My Commission Expires 1/17/2026 Notary 10 124024645 Notary Public, State of Texas
STATE OF TEXAS COUNTY OF DALLAS	& & & & & & & & & & & & & & & & & & &
municipality, known to me instrument, and acknowledg consideration therein stated	undersigned authority, on this day personally appeared, city manager of the Town of Addison, a home-rule to be the person whose name is subscribed to the foregoing ted to me that he executed the same for the purposes and er my hand and seal of office this day of
[SEAL]	By: Notary Public, State of Texas
	My commission expires:
Scarborough Airport I, LP	
Ground Lease Exhibit 3	Page 3

Town of Addison, Texas Resolution No. ____

Exhibit A

Lease Tract No. 1 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T.

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being all of that called Lease Tract No. 1, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said tract being more particularly described, as follows:

BEGINNING at an "X" cut in concrete found (Grid Coordinate: Northing=7,041,461.90', Easting=2,480,265.52) for the southeasterly corner Lease Tract 1, same being an angle point of said ADDISION AIRPORT, said corner also being the most northerly northwest corner of the VAN-HOFF SUBDIVISION, an addition to the Town of Addison, as recorded in Volume 79122, Page 1831, M.R.D.C.T., said corner also being the most westerly southwest corner of;

THENCE North 68°50'41" West, over and across said ADDISION AIRPORT, same being the southerly line of said Lease Tract No. 1, a distance of 161.58' to a 1/2" iron rod found for the southwesterly corner of said Least Tract 1:

THENCE North 00°34'31" West, along the westerly line of said Lease Tract No. 1, same being over and across said ADDISION AIRPORT, a distance of 117.57' to a p.k. nail found for the northwesterly corner of said Lease Tract No. 1, same being in the southerly line of Lease Tract No. 2, as shown on said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 89°25'29" East, along the common line between said Lease Tract No. 1 and Lease Tract No. 2, a distance of 150.13' to a p.k. nail found for the northeasterly corner of said Lease Tract No. 1, same being the southeasterly corner of Lease Tract No. 2, said corner being in the westerly line of said BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), said corner also being in an easterly line of said ADDISION AIRPORT;

THENCE South 00°33'53" East, along the common line between Lease Tract No. I and BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 177.39' to the POINT OF BEGINNING and containing 22,139 square feet or 0.508 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 3

Lease Tract No. 4 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being a part of that called Lease Tract No. 3, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., and being all of that called 0.041 acre tract, described in deed to the City of Addison, Texas, as recorded in Volume 84214, Page 773, of the Deed Records, Dallas County, Texas (D.R.D.C.T.), said tract being more particularly described, as follows:

BEGINNING at a 1/2" iron rod found with red plastic cap stamped "DAL-TEC" found (Gird Coordinate: Northing=7,041,666.08, Easting=2,480,463.33') for the southeasterly corner of said Lease Tract No. 3, same being the southeasterly corner of said 0.041 acre tract, said corner also being the northeasterly corner of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said corner also being in the westerly monumented line of Addison Road;

THENCE South 89°26'29" West, along the southerly line of said 0.041 acre tract, same being the southerly line of said Lease Tract No. 3, said corner also being the northerly line of BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 199.80' to a p.k. nail found for the southwesterly corner of said 0.041 acre tract, same being the southwesterly corner of said Lease Tract No. 3, said corner also being in the easterly line of Lease Tract No. 2, of said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 00°37'52" West, along the westerly line of said 0.041 acre tract and said Lease Tract No. 3, same being the easterly line of said Lease Tract No. 2, a distance of 9.00' to a p.k. nail found for the northwesterly corner of said 0.041 acre tract;

THENCE North 89°26'29" East, along the northerly line of said 0.041 acre tract, same being over and across said Lease Tract No. 3, a distance of 199.81' to an "X" cut found for the northeasterly corner of said 0.041 acre tract, same being in the easterly line of said Lease Tract No. 3, same being in the westerly monumented line of Addison Road;

THENCE South 00°34'00" East, along the westerly monumented line of said Addition Road, same being the easterly line of said 0.041 acre tract and said Lease Tract No. 3, a distance of 9.00' to the POINT OF BEGINNING and containing 1,798 square feet or 0.041 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 3

Exhibit 4 - Pavement Inspection Report (PIR) Template

PAVEMENT INSPECTION REPORT

This form represents a sample format for recording inspection and maintenance data. Any form is acceptable provided the inspection data and maintenance information can easily be retrieved and assigned to the correct pavement element. Other variations may include dating each distress and keeping a running sheet rather than using a new sheet for each inspection. Although not necessary, a properly constructed electronic spreadsheet or database will allow quick reference and summary of this data.

Dated Inspected	Cost				
Dated	Date Performed				
Inspected By:	Maintenance Action / Description of Repair				5
Pavement Element:	Location Inspection Record (see map Distress, description, Dimensions, or aerial) Severity, Features Recommended Action			149	
	Location (see map or aerial)				

Scarborough Airport I, LP Ground Lease Exhibit 4

EXHIBIT 5

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement (the "<u>Agreement</u>") is entered into as of the Effective Date by and between the **Town of Addison**, **Texas**, a Texas home-rule municipality (the "<u>City</u>") and **Scarborough I Airport**, **LP**, a Texas limited partnership (the "<u>Company</u>") (each a "party" and collectively the "parties").

RECITALS:

WHEREAS, City is the owner of the Addison Airport located within the City; and

WHEREAS, the Company desires to enter into (or has entered into) a ground lease for the Ground Lease Property (defined herein) with City as landlord and Company as tenant (the "Ground Lease"); and

WHEREAS, in connection with the Ground Lease, Company (as tenant) intends to re-construct and/or repair the existing aircraft apron within the Ground Lease Property (the "Site Improvements"); and

WHEREAS, the existing aircraft apron on the Ground Lease Property abuts the Aiport's Taxilane Uniform Common Area, which is owned by the City and serves as a public aeronautical access easement for the Ground Lease Property and the general aviation public; and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction of improvements related to the development of public facilities within the City; and

WHEREAS, City has determined that it would serve the best interest of the general aviation public to have the aircraft apron within the Taxilane Uniform Common Area reconstructed by Company's Contractor in conjunction with Site Improvements to the Ground Lease Property (the "Taxiway Improvements"); and

WHEREAS, City and Company desire to enter into this Agreement to set forth the parties rights and obligations with respect to the foreogoing Improvements, including City's participation in the Project costs in conformance with Section 212.071 of the Texas Local Government.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Company do hereby agree as follows:

Article I Term

The term of this Agreement shall commence as of the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall be defined as follows:

"Airport" shall mean the Addison Airport.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

"Applicable Laws" shall mean all laws, ordinances, standards, codes, statutes, rules and regulations of the United States, the State of Texas (including without limitation the Federal Aviation Administration and Texas Department of Tranportation and any and all grant agreements or assurances with same), the City (including the Airport's adopted Rules and Regulations), and any other governmental entity having jurisdiction over the subject matter of this Agreement, including all work or services to be performed in connection with the Project (including, without limitation, the standards of the Americans with Disabilities Act of 1990).

"Commencement of Construction" shall mean that (i) the Design Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the Design Plans have been issued by all applicable governmental authorities, and (iii) site preparation necessary for the construction of Improvements, as applicable, has commenced.

"Completion of Construction" shall mean: (i) the Project has been substantially completed in accordance with the Design Plans; and (ii) the Improvements have been accepted by the City in writing.

"Design Plans" shall mean the plans and specifications for the construction of the Improvements, inclusive of any change orders thereto, prepared in compliance with this Agreement by a professional architect or engineer authorized to practice in the State of Texas, which have been approved by the City.

"Effective Date" shall mean the date this Agreement has been signed by authorized representatives of City and Company.

"Force Majeure" shall have the meaning ascribed to it in Article V of this Agreement.

"Ground Lease Property" shall mean that certain tract of land located within the Airport consisting of approximately .508 acres (22,124 gross square feet) adjacent to 16445 Addison Road that Company has leased, or intends to lease from City, as further described and depicted in Exhibit 1.

"Improvements" shall mean the Site Improvements and Taxiway Improvements, collectively.

"Payment Request" shall mean Company's written request(s) to City for payment of the City's share of the Project costs prepared in conformance with Article III of this Agreement.

"Project" shall mean the construction the Improvements in conformance with this Agreement and the Construction Contract, including, without limitation, all design, administration, and construction work related thereto.

"Site Improvements" shall mean the pavement repair and reconstruction work on the aircraft apron to be performed on the Ground Lease Property, as depicted in Exhibit 1 and more particularly described in Exhibits 2 and 3.

"Taxiway Improvements" shall mean the pavement repair and reconstruction work to be performed within the Taxiway Uniform Common Area, as depicted in **Exhibit 1** and more particularly described in **Exhibits 2 and 3**.

"Taxiway Uniform Common Area" shall mean the paved land area abutting the Ground Lease Property, being approximately forty-five feet wide by one-hundred and eighty feet in length fifty-five feet within the eastern Object Free Area to Taxiway Uniform, as further described and depicted in Exhibit 1.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Article III The Project

3.1 <u>The Project</u>. Subject to the terms and conditions set forth herein, Company agrees to cause the Commencement and the Completion of the Construction of the Project as set forth herein in accordance with the Design Plans. Company shall ensure that the Project is performed in a proper, efficient, timely, and professional manner in accordance with this Agreement.

3.2 Project Construction.

- (a) Construction Contract. Company shall promptly enter into a contract with one or more contractors (the "Contractor") to construct the Project (the "Construction Contract").
- (b) Rights of Access; Utilities. City shall grant to Company and its Contractor such rights-of-access to the Project site as may be necessary for the Project, including a revocable, nonexclusive license to access and enter upon the Taxiway Improvements site for the sole purpose of constructing the same. Company's right of access is subject to the City's safety requirements within any portion of the Airport's Common Area as defined in the Rules and Regulations. Company shall be responsible for coordinating with City and utility providers to minimize the possibility of damage to utilities and any disruption to users and tenants of the Airport within proximity of the Project site.
- (c) Inspections. Company shall routinely and thoroughly inspect or cause the construction work to be inspected by the engineer that prepared the Design Plans, or other qualified licensed engineer familiar with the Design Plans, to ensure the materials and workmanship on the Project are performed in conformance with the Design Plans and to guard against defects and/or deficiencies in the Project without assuming responsibility for the means and methods used by the Contractor. Additionally, City shall have the right to inspect, test, measure, or verify the work on the Project at any time; provided that the City shall not assume any responsibility for inspection of the work or the means and methods used by the Contractor in connection with the same.
- (d) Progress Reports. Company shall keep the City regularly informed regarding the progress of the construction work on the Project. In particular, Company shall provide City written notification (including supporting documentation as may be reasonably requested by City) for the following events: (i) award of the Construction Contract (including copies of bonds and insurance), (ii) notice to proceed to Contractor, (iii) any alleged or actual default of the Contractor (including Company's notice to Contractor re the same), and (iv) substantial completion of the work on the Project (or any portion thereof) such that it is ready for final inspection by the City.
- (e) Change Orders. All change orders with respect to the design or construction of the Project must be approved in writing by the City. No change order shall result in the total Project costs identified in the approved Construction Contract exceeding one-hundred and ten percent (110%) of the anticipated Project costs, as more particularly described in the opinion of probable costs attached hereto as <u>Exhibit 3</u>.
- (f) Construction Schedule. Company shall cause Completion of Construction of the Project to occur not later than the 356^{th} calendar day following the Effective Date, subject only to extension in the event of Force Majeure.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (g) Compliance with Plans; Applicable Laws. All work on the Project shall be performed in a good and workmanlike manner and constructed in accordance with the Plans and all Applicable Laws.
- (h) Inspection of Records. Company and Contractor shall grant City the right to examine or inspect, at City's election, all records relating to the Project during the Term of this Agreement and any retention period herein. City's examination or inspection of such records may be performed by a City designee, which may include an outside representative engaged by City. Company and Contractor shall retain all records relating to the Project for a minimum of four (4) years following the expriation or earlier termination of this Agreement, unless there is an ongoing dispute under this Agreement or the Construction Contract; then, such retention period shall extend until final resolution of the dispute.
- (i) Certification of No Conflicts. Company shall require Contractor to warrant that Contractor has made full disclosure to City in writing of any existing or potential conflicts of interest related to Contractor's performance of the work under the Constructgion Contract. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor shall be required to immediately make full disclosure to the City in writing.
- (j) Additional Obligations of Company. Company shall timely pay the Contractor in accordance with the terms and conditions of the Construction Contract. Upon Completion of Construction of the Project, Company shall ensure that the real property upon which the Project was constructed is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Company, any Contractor, or any subcontractor or material suppliers.
- (k) No Waiver of City's Rights. Neither City's review, approval or acceptance of, nor payment for any of the construction work performed by Contractor shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 3.3 <u>Project costs.</u> The total Project costs, including all change orders thereto, is anticipated to be \$787,307.67, as more particularly described in the statement of probable costs attached hereto as <u>Exhibit</u> 3. Although the parties anticipate the final amount of the Construction Contract may differ from the anticipated Project costs, in no event shall the total amount of the Construction Contract exceed one-hundred and ten percent (110%) of the anticipated Project costs without prior written approval of City, which may be withheld at City's sole discretion. Notwithstanding the foregoing, if the Project costs proposed by the Contractor exceeds one-hundred and ten percent (110%) of the anticipated Project costs, City and Company may agree to (i) work together to modify the Project scope to cause the Project costs not to exceed one-hundred and ten percent (110%) of the Project costs as determined above, or (ii) terminate this Agreement with each party paying their respective share of the costs (as set forth in <u>Exhibit 3</u>) incurred through the date of termination.
- 3.4 <u>City Cost Participation</u>. City has requested, and Company agrees, to construct the Taxiway Improvements for the benefit of the Airport and the public in accordance with the Design Plans in conjunction with the Site Improvements. Accordingly, City agrees to reimburse Company the City's share of the actual Project costs which Company pays its Contractor to construct the Project in conformance with the cost allocation schedule provided in <u>Exhibit 3</u> (the "<u>City Cost Participation</u>"). Notwithstanding the foregoing, in no event shall the City's reimbursement amount not exceed thirty percent (30%) of the total Project costs (excluding City requested upgrades for which the City shall be responsible for one hundred percent (100%) of the total costs).

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

The parties acknowledge that the Improvements will be owned by the City. City agrees to provide to Company and Contractor within five (5) days after the Effective Date: (a) a W-9 for the City; and (b) a copy of the City's tax exemption certificate.

- 3.5 <u>Reimbursement Procedures</u>. Subject to the terms and conditions of this Agreement, the City shall reimburse Company for the Project costs in conformance with the cost allocation schedule provided in <u>Exhibit 3</u> as follows:
 - (a) Payment Requests. City agrees to pay the City Cost Participation in installments as construction progresses based on completed Payment Requests delivered by Company to City for review and approval. All Payment Requests shall include the following (which shall be conditions precedent to payment):
 - (i) a true and correct copy of the applicable invoice(s) submitted by the Contractor to Company (together with all attachments, documents, and materials applicable thereto);
 - (ii) certification from Company's design/project engineer that the Contractor's invoice is fair and reasonable for the work completed and materials delivered to the Project;
 - (iii) certification from Company that the work for which reimbursement has been requested has been completed by Contractor and paid by Company in compliance with the Construction Contract and this Agreement;
 - (iv) duly executed partial lien waivers from Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the work completed; and
 - (v) a certificate from the Design Professional that the applicable work has been completed in accordance with the Design Plans.
 - (b) Approval of Payment Request. City shall review and approve, approve in part and deny in part, or deny in its entirety each Payment Request not later than ten (10) days after receipt of the Payment Request. In the event the City denies all or a portion of a Payment Request, the City will provide a written description of the reason for the denial. Company may submit an amended Payment Request, which shall be reviewed and considered for payment in the same manner as the original. Payment Requests shall not be submitted to City more than once per calendar month and not earlier than thirty (30) days after the immediately previous Payment Request was delivered to City
 - (c) Payment. Provided that Company is not then in default of this Agreement beyond any applicable cure period City agrees to pay Company all undisputed amounts set forth in the Payment Request (less the Retainage) not later than twenty (20) days after approval of the Payment Request by the City. Payment of City's Retainage (defined below) shall constitute the last and final payment to be made by the City to Company pursuant to this Agreement, and completion of all of the City's obligations hereunder.
 - (d) Retainage. Notwithstanding paragraph (c), above, City shall withhold an amount equal to ten percent (10.0%) of the City Cost Participation set forth in the Payment Request (the

Chapter 212 Developer Participation Agreement (Scarborough Airport I,	LI	P	ŋ
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"<u>Retainage</u>"). City shall not be required to pay the Retainage to Company until after Completion of Construction of the Project and Company's delivery and City's acceptance of the following:

- Certification by the Design Professional (sealed by the Design Professional) that the Project has been fully and finally completed in accordance with the Construction Contract and Design Plan;
- (ii) certification from Company that the Project has been finally completed in accordance with the Construction Contract, this Agreement, and all Applicable Laws:
- (iii) the City's receipt of a written certification from Company that the final payment for the construction of the Project has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same; and
- (iv) all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Project.

Article IV Surety, Insurance and Indemnification

- 4.1 <u>Construction Sureties.</u> Company shall provide to the City evidence of the following guaranteeing the faithful performance of the Project and the payment of all obligations arising under the Construction Contract:
 - (a) Payment and Performance Bonds. Prior to Commencement of Construction Company shall provide to the City surety bonds guaranteeing the performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Project costs.
 - (b) Maintenance Bond. Company warrants and represents that it will repair or cause to be repaired any defects in the work herein contracted to be done and performed for a period of one (1) year from the date of the City's acceptance of the Project. Upon Completion of Construction of the Project, Company shall submit a surety bond guaranteeing workmanship and materials for a period of one (1) year from the Completion of Construction.
 - (c) Surety Requirements. Company shall pay or cause the Contractor to pay the premiums for all bonds required to be provided under this Section 4.1. All bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City and shall list Company and City as joint beneficiaries.
- 4.2 <u>Insurance</u>. Company shall maintain minimum insurance policies and coverages described in this section at all times during the Term of this Agreement. Company may satisfy this requirement through insurance provided by its Contractor.

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- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
 - "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
 - (i) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.
- (f) The following additional requirements shall apply to the foregoing insurance policies:
 - The City shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
 - (ii) All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - (iii) A waiver of subrogation in favor of the City, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
 - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
 - (v) All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
 - (vi) All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (viii) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and written on forms filed with and approved by the Texas Department of Insurance.
- (x) Certificates of Insurance delivered to Company and City prior to the Commencement of Construction (or within 15 days after the Effective Date if construction has already commenced)
 - Company shall require the Contractor to require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements.
- (xi) City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

4.2 Indemnification

COMPANY COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY, AND SUCH ELECTED OFFICIALS, AND OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY EACH BEING AN "ADDISON PERSON"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) WORK TO BE PROVIDED BY COMPANY AND THE CONTRACTOR IN CONNECTION THE PROJECT; (2) REPRESENTATIONS OR WARRANTIES BY COMPANY UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY COMPANY, THE CONTRACTOR, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, OR LICENSEE OF COMPANY, OR ANY OTHER PERSON OR ENTITY FOR WHOM COMPANY IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, AND REPRESENTATIVES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT NOT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY ADDISON PERSON.

Notice of Claim. Company shall promptly advise the City in writing of any claim or demand against any Addison Person or Company related to or arising out of Company's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Company's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

THE PROVISIONS OF THIS SECTION 4.2, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Article V Default; Termination; Abandonment

- 5.1 <u>Default by Contractor.</u> Should Company fail to comply with any term or condition this Agreement applicable to Company, Company shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if Company's default is not corrected within twenty (20) days after written notice by City, City may, at its sole discretion and without prejudice to any other right or remedy:
 - (a) terminate this Agreement and be relieved of any further payment or consideration to Company except for reimbursement, pursuant to an approved Payment Request, of the City's portion of the Improvements determined by City to be satisfactorily completed prior to such termination; or
 - (b) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Company's sole expense.
- 5.2 <u>Default by City.</u> Should City fail to comply with any term or condition this Agreement applicable to City, City shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if City's default is not corrected within twenty (20) days after written notice by Company, Company may terminate this Agreement.
- 5.3 Extension of Initial Cure Period. During the initial cure period, if the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter continuously and diligently prosecutes the curing of such default, the initial cure period shall be extended for such period as may be necessary to cure such default, provided, that in no event shall such extension exceed forty (40) days following the initial occurrence of the default without the written consent of the non-defaulting party, which may be withheld in the non-defaulting party's sole discretion.
- 5.4 <u>Termination by City.</u> The City may terminate this Agreement without notice or any opportunity upon the occurrence of any of the following:
 - (a) Adjudicated insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, Company;
 - (b) Filing of a petition under any section 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 the Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company;
 - (c) Appointment of a receiver or trustee for all or substantially all of the assets of the Company;
 - (d) Abandonment of the Project pursuant to Section 5.5, below; or

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Chapter 212 Developer Landcipant	n rigiteditent (Semborough rimport 1, L1)	rage.

- (e) The Company is in default of any ground lease or other lease or arrangement with the City beyond the expiration of applicable notice and cure periods.
- Abandonment. Notwithstanding any other provision of this Agreement, If Company and/or the Contractor should abandon and fail or refuse to resume the Project within ten (20) days after written notification from City to Company, then, the surety on the performance bond(s) may be notified in writing by City of such abandonment and directed to complete the Project, with a copy of said notice delivered to Company and Contractor. After receiving said notice of abandonment, neither Company nor Contractor may remove from the Project site any machinery, equipment, tools, materials or supplies then on site, and the same, together with any materials and equipment under contract for the Project may be held for use on the Improvements by the City or the surety on the performance bond(s), or another contractor in completion of the Project. In such event neither Company nor Contractor shall receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the Project and be reflected in the final settlement of the City's Cost Participation under this Agreement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the Project in either of the following elective manners:
 - (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Company, which may be paid by City out of the City's allocated share of the Project costs and applied as a credit to City's Cost Participation, or any other amounts that may at any time become due to the Company under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the City; or
 - (2) the City may (under sealed bids when and in the manner required by law) let the contract to another contractor for the completion of the Project under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what the City would have been obligated to pay under this Agreement, such increase shall be charged to the Company and Company's sureties shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith
- 5.6 <u>Remedies Cumulative</u>. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided in this Article.
- 5.7 <u>Force Majeure</u>. No party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each an event of "Force Majeure"). The party asserting Force Majeure shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii)

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Article VI Miscellaneous

- 6.1 No Joint Venture. Company is an independent contractor, and Company shall accomplish all of its obligations under this Agreement in such capacity. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties (or between City and Contractor). The City shall have no control or supervisory powers as to the detailed manner or method of Company's performance of the subject matter of this Agreement nor the Contractor's means and methods of construction related to the Project.
- 6.2 <u>Assignment</u>. Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.
- 6.3 No <u>Third Party Beneficiaries</u>. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
- 6.4 <u>Survival</u>. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.
- 6.5 No Waiver. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.
- 6.6 <u>Exhibits</u>. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.
- 6.7 Governing Law. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; 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. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.
- 6.8 Entire Agreement. This Agreement supersedes all previous agreements regarding the matters set forth herein and constitutes the entire understanding of the parties. Company shall be entitled to

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no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Except for the obligations of Company under this Agreement, neither Company nor any other owner of the Property shall have any further obligations under the Master Facilities Agreement.

- 6.9 <u>Severability</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 6.10 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

To City:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001 Email: wpierson@addisontx.gov To Company:

Scarborough Airport I, LP 16380 Addison Road Addison, Texas 75001 Attn: Mr. James R. Feagin jfeagin@landmarkinterests.com

and

Town of Addison, Texas c/o Assistant Director – Real Estate 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Email: bill.dyer@addisonairport.net

6.11 <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 Agreement on behalf of the parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY – SIGNATURES ON FOLLOWING PAGE(S)]

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date. For City: For Company: Town of Addison, Texas Scarborough Airport I, LP a Texas limited partnership By: Scarborough I Airport GP, LLC, a Texas Wes Pierson, City Manager limited liability company, its general partner Date:_ James R. Feagin, Manager Date: _ Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP) Page 13

EXHIBIT 1

PROJECT SITE DESCRIPTION

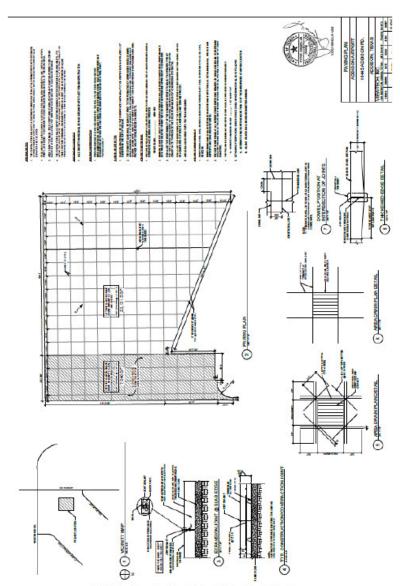
DEPCTION OF SCARBOROUGH SITE IMPROVEMENTS AND CITY TAXIWAY CITY IMPROVEMENTS



Exhibit 1: Project Site Description Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 2

DESIGN PLANS



Full Size Drawing Available in City Airport Archives

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 3 DESIGN PROFESSIONAL'S STATEMENT OF PROBABLE COST

			SCARBOROL	ADDISON AIRPORT SCARBOROUGH DEVELPEROR PARTICIPATION	RPORT ROR PARTICIPA	NOITA				
			ALLC	ALLOCATION OF PROJECT COST REVISED 6/20/2022	ROJECT COST 6/20/2022					
							COMPANY		CITY UPGRADE	CITY TOTAL
	3	1	The state of the s	COTINAATON			SHAKE	CITY SHARE	ALLOWANCE	SHARE
SPEC. NO.	WORK/MATERIAL DESCRIPTION	Upgrade	UNIT	UNIT QUANITY	UNIT PRICE	UNIT PRICE PROJECT COSTS	70%	30%	100%	
	1 Demolish 6" existing paving	No	S.F.	31,616.00	\$4.35	\$137,529.60	\$96,270.72	\$41,258.88	\$0.00	\$41,258.88
	2 Excavate and hauloff 4" of cut	No	S.Y.	410.00	\$44.55	\$18,265.50	\$12,785.85	\$5,479.65	\$0.00	\$5,479.65
	3 Lime stabilize 6" of subgrade as per report	No	S.F.	31,616.00	\$1.75		\$38,729.60	\$16,598.40	\$0.00	\$16,598.40
	4 Place / finish 10" concrete with steel as per plans	No	S.F.	31,616.00	\$15.80	\$499,532.80	\$349,672.96	\$149,859.84	\$0.00	\$149,859.84
	5 Saw cutting as per plans	No	S.F.	31,616.00	\$0.17	\$5,374.72	\$3,762.30	\$1,612.42	\$0.00	\$1,612.42
	6 Sealant as per plans	No	S.F.	31,616.00	\$0.25	\$7,904.00	\$5,532.80	\$2,371.20	\$0.00	\$2,371.20
	7 Construction staking and grades	No	EA.	1.00	\$4,167.50	\$4,167.50	\$2,917.25	\$1,250.25	\$0.00	\$1,250.25
	8 Traffic control	No	EA.	1.00	\$3,570.00		\$2,499.00	\$1,071.00	\$0.00	
	9 Builder risk policy	No	EA.	1.00	\$4,165.00	\$4,165.00	\$2,915.50	\$1,249.50	\$0.00	\$1,249.50
-	10 \$5 mil - mbrella policy	No	EA.	1.00	\$5,950.00	\$5,950.00	\$4,165.00	\$1,785.00	\$0.00	\$1,785.00
-	11 Performance bond	ON	EA.	1.00	\$21,338.55	\$21,338.55	\$14,936.99	\$6,401.57	\$0.00	\$6,401.57
1	12 General Conditions	ON	EA.	1.00	\$24,182.00	\$24,182.00	\$16,927.40	\$7,254.60	\$0.00	\$7,254.60
1	£	61100	The state of the s		Tall the Property of the Prope	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	14					\$0.00	\$0.00	\$0.00	\$0.00	
	15					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
-	16					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2						\$787,307.67	\$551,115.37	\$551,115.37 \$236,192.30	\$0.00	\$236,192.30
	AREA CALCULATION:				Abbreviation Key	Key				
	Scarborough area as per plan	70%	22,131.50	sf	SY = Square Yards	ards				
	City of Addison area proposed area	30%	9,484.50	sf	CY=Cubic Yards	ds				
	Total square feet	100%	100% 31.616.00 sf	15	LF= Linear Feet	ta a				

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Ground Lease Addendum #1

CONSTRUCTION OF NEW LAND IMPROVEMENTS (Excluding Future Land Improvements)

This Ground Lease Addendum #1 is hereby made a part of that certain Ground Lease Agreement by and among Town of Addison, Texas and Scarborough I Airport, LP with the Effective Date of _______, 202___, which is incorporated hereto by reference. All capitalized terms used herein are the same as defined in the Ground Lease or any other Addendum attached and made a part of the Ground Lease unless otherwise expressly stated otherwise herein.

To induce the City to enter into the Ground Lease and to grant Tenant the Extended Term, concurrently with the Ground Lease, the City and Tenant have entered or intend to enter into a separate Developer Participation Contract ("Developer Contract") of same Effective Date (an executed copy of which, shall be attached to the Ground Lease as Exhibit 5 and incorporated herein by reference), where Tenant agrees to construct or cause to construct certain New Land Improvements (herein so called) made unto the Demised Premises and adjacent and abutting airport land as expressly provided for in the Developer's Contract and where the City shall reimburses the Tenant for design and construction costs associated with the City's share of Tenant's construction costs as expressly provided for in the Developer's Contract.

Scarborough Airport I, LP Ground Lease Addendum I

Ground Lease Addendum #2

CONSTRUCTION OF FUTURE LAND IMPROVEMENTS (Excluding New Land Improvements)

This Ground Lease Addendum #2 is hereby made a part of that certain Ground Lease Agreement by and among Town of Addison, Texas and Scarborough I Airport, LP with the Effective Date of _______, 202___, which is incorporated hereto by reference. All capitalized terms used herein are the same as defined in the Ground Lease or any other Addendum attached and made a part of the Ground Lease unless otherwise expressly stated otherwise herein.

- Except as provided for in the Ground Lease, Tenant may not construct, locate, install, placed or erect any other improvements upon the Demised Premises without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.
- 2. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant may have cause during the Term to construct buildings and other real property improvements ("Future Land Improvements") on the Demised Premises, which shall be at Tenant's sole cost, expense and risk (except as may be otherwise agreed to in writing by Landlord and Tenant) in accordance with the Design Plans (as defined below). Tenant is not required to construct any Future Land Improvements. The provisions of this Addendum shall only be applicable if Tenant elects to construct any Future Land Improvements. The improvements described in the Developer Contract shall not constitute Future Land Improvements for purposes hereof.
- 3. The Future Land Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared signed and stamped by an architect and/or engineer selected by Tenant (the "Design Plan"), which Design Plan shall be submitted to Landlord and approved in writing by Landlord evidenced by the issuance of a building permit or other means as determined by Landlord, which shall not be unreasonably withheld, conditioned or delayed.
- Any architect or engineer engaged by Tenant pursuant to this Ground Lease Addendum #2 shall be duly licensed to practice architecture or engineering in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including incidental, special damages and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage, destruction or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction or violation of this Lease with respect thereto, and TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS DESCRIBED IN THE PRECEDING SENTENCE (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE "DAMAGES") ARISING OUT OF TENANT'S USE OF THE DEMISED PREMISES, BUT EXCLUDING ANY DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LANDLORD OR ANY PARTY ACTING ON ITS BEHALF. THIS INDEMNIFICATION

Scarborough Airport I, LP Ground Lease Addendum #2

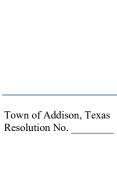
SHALL SURVIVE THE TERMINATION OF THIS LEASE. It is expressly understood and agreed that Tenant's construction of the Future Land Improvements shall include the finish-out in accordance with the plans and specifications for the finish-out of the Future Land Improvements as submitted by Tenant to Landlord in the approved Design Plan.

- 5. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.
- 6. After construction of the Future Land Improvements commencement, Tenant shall complete construction with reasonable diligence and in conformance with the Design Plan. Any material deviation from the Design Plan shall be subject to the prior review and written approval of Landlord.
- 7. If Tenant fails to achieve Final Completion (as defined below) of said Future Land Improvements within 90 days after construction of the Future Land Improvements commences, subject to events of Force Majeure, such failure shall constitute an event of default of the Lease if not cured within the notice and cure periods set forth in this Lease. In such event, Landlord may terminate this Lease by giving written notice to Tenant pursuant to Section 23. B of the Lease.
- 8. Tenant agrees that any construction or modification of the Future Land Improvements or any other improvements which may be authorized in writing by Landlord on or within the Demised Premises shall be performed in substantial compliance with all Laws. Tenant recognizes that construction/maintenance standards and specifications, the City's building and related codes and zoning requirements, and all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Future Land Improvements pursuant to the approved Design Plan.
- 9. Tenant will properly and timely submit to the FAA the TxDOT, and any other governmental authority, entity or agency having jurisdiction regarding the Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over the Airport.
- 10. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises and all parts thereof during normal business hours, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

Scarborough Airport I, LP Ground Lease Addendum #2

- 11. "Final Completion" of the construction of the Future Land Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Future Land Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Future Land Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.
 - 11. In connection with any construction on the Demised Premises:
- A. During any period of construction, a Builder's Risk Completed Value policy with an all-risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$5,000.
- For any Future Land Improvement with a total hard construction cost (material and labor only) value in excess of Five Hundred Thousand Dollars (\$500,000) in excess of the portion of the cost of such Future Land Improvements to be paid by Landlord, Tenant shall cause to be issued in favor of Landlord, at Tenant's sole cost and expense, and kept in full force and effect at all times during any period of construction, either a payment and performance bond or an irrevocable, standby letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Future Land Improvements), in the amount of one hundred percent (100%) of the construction costs (the "Letter of Credit"), such Letter of Credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred and is continuing under this Lease with respect to the construction of the Future Land Improvements and Tenant has not cured the event of default after being given notice and a reasonable opportunity to cure as provided in the Lease. The Letter of Credit shall be of form and substance acceptable to Landlord. Tenant shall cause the original executed Letter of Credit to be delivered to Landlord as a precondition to the mobilization of construction. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the Letter of Credit on a calendar quarterly basis (or some other frequency acceptable to Landlord) by an amount equal to the construction costs incurred and paid by Tenant, less any contractual retainage as evidenced by Tenant's certified payment affidavit sign by Tenant's architect or, inspecting engineer. Such requested reduction of the Letter Credit balance shall be further reduced by any written contractor, subcontractor and or vender claims at time of the request.
- 12. Subject to extension for delays caused by Force Majeure events, failure of Tenant to observe and comply with the requirements of this <u>Ground Lease Addendum #3</u>, subject to notice and cure as provided in <u>Section 23(B) of the Lease</u>, shall be an Event of Default.

Scarboro	ugh Airpor	rt I, LP
Ground L	ease Adde	endum #2



Site Location of 16445 Scarborough I Airport, LP Ground Lease at 16445 Addison Road





Proposed Ground Lease with Scarborough I Airport, LP

Summary of Lease Terms

- 1. **Effective Date:** The Date of Formal Consent by the Town of Addison Town Council.
- 2. **Tenant**: Scarborough I Airport, LP, a Texas limited partnership liability company (Jim Feagin, Addison, TX).
- 3. **Leased/Demised Premises**: Airport land consisting of approximately .51+/- acres (22,135 ¹gross square feet) located at 16445 Addison Road at the Airport.
- 4. **Preliminary Period**: None.
- 5. **Due Diligence Period**: None.
- 6. **Commencement Date**: Same as the Effective Date:
- 7. Term:
 - i. Initial Base Term is for 24-full calendar months following the Commencement Date.
 - ii. Extended Term Option: Provided Tenant satisfactorily completes the construction of the New Land Improvements defined in Lease Addendum #1, the Base Term shall be extended so that the Lease ends 480 months following the Commencement Date.
- 8. **Rent**: Annual Rent payable in twelve equal monthly installments over the term beginning at \$12,168.20 (\$.55/SFL), or \$1,014.02 per month.
- 9. **Adjustment of Rent** based upon the percentage of change in the local CPI between the Commencement Date and its second anniversary; then every two years thereafter over the Term.

10. Permitted and Restricted Use of Premises:

- A. Permitted Uses for the storage of air-worthy aircraft and equipment used in connection with Tenant's aeronautical operations only.
- B. Restricted Uses Standard lease restrictions apply.

11. Land Improvements and Construction of New Land Improvements:

- A. Existing Building Improvements Those improvements in place as of the Effective Date. Tenant accepts in their as-is where-is condition.
 - i. Tenant responsible for demolition of existing conditions as required by Design Plan at its sole costs, expense and risk.
- B. New Land Improvements <u>Lease Addendum #1</u>: See Developer's Participation Contract

¹ Subject to final property survey.

C. Future Land Improvements - must have LL's prior written consent. To be performed pursuant to Lease Addendum #2 (typical LL construction requirements).

12. Assignment, Subletting & Leasehold Mortgage of Leasehold.

- A. Assignment: Standard Lease requirements.
 - i. It is known to Landlord the fee simple land is under contract for sale subject to Scarborough securing the ground lease and satisfactorily completing the reconstructed apron and taxilane. The buyer/assignee, Bel Air Communities, LLC, intends to take simultaneous assignment of the Ground Lease at closing.
- B. Subletting: Landlord gives consent to subletting of the leased premises for aircraft storage only. All other uses, require Landlord's prior written consent.
- C. Mortgaging of Leasehold: consistent with city lease standards. Tenant does not require a Leasehold Mortgagee at this time.
- 13. **Property Tax and Assessments** Standard language, however the nature of improvements made to the leased premises typically are not assessed ad valorem taxes.

14. Maintenance and Repair of Demised Premises:

- i. Tenant required to maintain improvements in good repair and condition
- ii. Tenant is required to provide LL Pavement Inspection Reports (PIR) beginning with the Commencement Date sixth anniversary and every five years thereafter (Exhibit 4 Report Template).
- iii. Landlord may make demand for any deferred maintenance identified to be remedied by Tenant. Tenant's failure to remedy may constitute a default.
- iv. LL has right to perform its own PIR with similar remedy provisions.
- v. If deferred maintenance is identified
- 15. **Title to all Building Improvements:** All improvements made to the Premises is to be owned by Landlord
 - i. Improvements contemplated by this Lease and the Developer's Participation Contract include only concrete pavement and required markings, improvements cannot be removed by Tenant
 - ii. Prerequisite of Section 212 of Texas Admin. Code
 - iii. Improvements are generally not subject to taxation
- 16. Lease Addendum #1 New Land Improvements are to be perform in accordance with Developer's Participation Contract (to be attached as Exhibit 5 of Lease)
- 17. **Lease Addendum** #2 Construction of Future Land Improvements (same as standard new construction provisions and requirements).
- 18. All other terms and conditions are consistent with Town's current lease standards.

Council Meeting 15.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Innovative in Entrepreneurship & Business

Milestones: Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action on an Ordinance of the Town of Addison, Texas Approving a Developer Participation Agreement with Scarborough I Aviation, LP for the Construction of Certain Public Improvements Within Addison Airport to a Portion of the Taxiway Uniform Shoulder and Apron; Providing for the City's Participation in the Costs of the Improvements in Conformance with Chapter 212 of the Texas Local Government Code; and Authorizing the City Manager to Execute the Agreement in an Anticipated Amount Not To Exceed \$236,192.

BACKGROUND:

Airport management is proposing the Town enter into a Developer Participation Agreement ("Contract") provided for under Subchapter C, Chapter 212, Tex. Loc. Gov. Code ("Code") with Scarborough I Airport, LP, ("Scarborough") to reconstruct a portion of airport taxilane and aircraft apron at Addison Airport.

Scarborough is the owner of a fee simple aeronautical facility located at 16445 Addison Road ("Commercial Property"), which is adjacent to and abuts the Addison Airport. Scarborough also leases approximately 22,000 square feet of airport land, which lies between Scarborough's Commercial Property and Taxiway Uniform, a nearby secondary taxilane connecting the northeast portion of the Airport to its primary runway system. The airport land subject to the lease is improved with concrete pavement first constructed in the 1980's, however, it is in fair to poor conditions.

Scarborough desires a new long-term ground lease with the Town to continue its use for staging and storing aircraft in connection with its "off-airport" commercial aeronautical operations. In consideration of the ground lease, Scarborough proposes to, among other things, reconstruct, the aircraft apron, at its sole cost and expense and in accordance with the Airport's prevailing design standards. Airport management has determined it would serve the best interest of the Airport and the general aviation public to have approximately 7,200 square feet of the Taxiway Uniform shoulder that adjoins the aircraft apron to be reconstructed at the same time.

Without having to comply with the competitive sealed bidding procedures of Chapter 252 of the Code, the Town may contract with a developer within its city limits to construct public improvements, provided the Town's share does not exceed 30% of the total contract price (excluding Town requested upgrades for which the Town is allowed to pay up to one hundred percent (100%) of the costs attributed to the upgrades). To qualify under Chapter 252, the work contracted must be for public improvements and not to include any vertical structures. The proposed reconstruction of the Taxilane Uniform and the aircraft apron qualify under the Code.

The proposed Developer Participation Agreement sets forth the terms and conditions, which Scarborough is responsible for performing under the prescribed scope of work pursuant to a design plan prepared by a licensed engineer and approved by the Town. Scarborough shall be responsible for contracting and overseeing their contractor or contractors necessary to complete the work. The engineer's estimate of probable cost ("EPC") is anticipated to be \$787,308.00 with the Town's share not to exceed \$236,192. Should the contract price exceed 110% of the total engineer's probable cost, Scarborough and the Town will cooperate to reduce the scope of the project as needed or terminate the Contract, as the case may be.

The benefits of approving the Developer Participation Contract include:

- Airport infrastructure and taxilanes are being improved
- There will likely be economies of scale recognized with the larger scope of work and unit volumes required.
- The aircraft apron and the taxilane reconstruction will provide a better project for both components with less disruption to aeronautical operations.

The Town's portion of the project costs will be paid from the Airport Enterprise Fund Capital Improvement Budget.

The Developer Participation Agreement has been reviewed by the city attorney and finds the form acceptable for the Town's purposes.

RECOMMENDATION:

Administration recommends approval

Attachments

Presentation - Proposed Developer Participation Agreement
Ordinance - Proposed Developer Participation Agreement Scarborough I LP
Location Map

Proposed Developer Participation Agreement

Scarborough I Airport, L.P.



Location





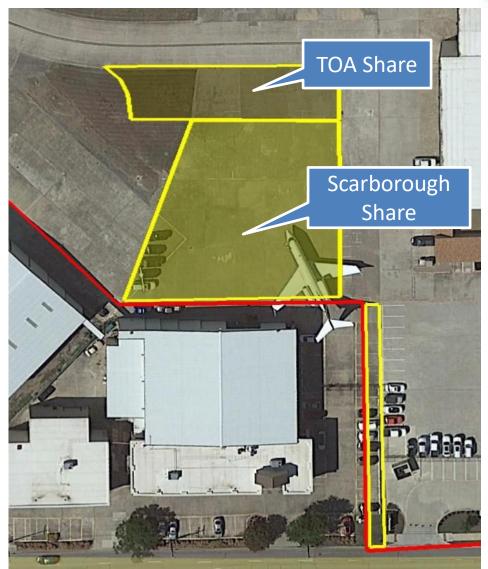
Developer's Participation Agreement

ADDISON

To Reconstruct a Portion of Taxiway Uniform abutting the Scarborough Lease Premises pursuant to Section 212 of Local Administration Code referred to as "<u>Developer's Participation Agreement</u>":

- Must benefit the public
- Only horizontal construction is eligible (roads, taxiways)
- Tenant performs construction using its general contractor
- Town may participate up to 30% of total project costs.
- Town reimburses Scarborough upon receipt of approved invoices.

	Land	Allocated	
	Area	Cost	%
Scarborough Land Area	22,132	\$551,115	70%
Town's Land Area	9,485	\$236,192	30%
Total Project	31,617	\$787,308	100%



Conclusion & Recommendation



Benefits of Approach:

- Scarborough apron is reconstructed per Airport Design Standards subject to a new ground lease.
- Portion of Taxiway Uniform is reconstructed where abutting the Scarborough apron:
 - To be funded from Airport Capital Improvement Fund.
- Scarborough uses their own contractor.
- Parties benefit due to larger scope of work, more concrete volume likely to get better pricing.
- Done as one project, less disruption and interruption of aeronautical operations.

Recommendation: Staff Recommends Approval



QUESTIONS?

|--|

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, APPROVING A DEVELOPER PARTICIPATION AGREEMENT WITH SCARBOROUGH I AIRPORT, L.P. FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS WITHIN ADDISON AIRPORT TO A PORTION OF THE TAXIWAY UNIFORM SHOLDER AND APRON; PROVIDING FOR THE CITY'S **PARTICIPATION** IN THE COSTS OF THE IMPROVEMENTS WITH CHAPTER **TEXAS** CONFORMANCE 212 OF THE GOVERNMENT CODE IN AN ANTICIPATED AMOUNT NOT-TO-EXCEED \$236,192.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City (as Landlord) and Scarborough I Airport, L.P. ("<u>Scarborough</u>") (as Tenant) intend to execute a ground lease (the "<u>Ground Lease</u>") for certain improved land at the Addison Airport consisting of approximately .55 acres along Taxiway Uniform (the "<u>Ground Lease Property</u>"); and

WHEREAS, in connection with the Ground Lease, Scarborough (as tenant) intends to reconstruct the existing aircraft apron within the Ground Lease Property; and

WHEREAS, the existing aircraft apron within the Ground Lease Property abuts the common area of Taxilane Uniform, which serves as a public aeronautical access easement for the general aviation public in addition to the Ground Lease Property; and

WHEREAS, City has determined that it would serve the best interest of the public to have Scarborough reconstruct the aircraft apron within the common area of Taxilane Uniform in conjunction with Scarborough's reconstruction of the aircraft apron within the Ground Lease Property (collectively, the "Improvements"); and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction related to the development of public facilities within the City; and

WHEREAS, City and Scarborough desire to enter into a Developer Participation Agreement to set forth the parties rights and obligations with respect to the Improvements described herein above, including City's reimbursement of the City's share of the costs in conformance with Subchapter C, Chapter 212, Tex. Loc. Gov. Code.

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

SECTION 1. The City Council hereby approves the Developer Participation Agreement (the "<u>Agreement</u>") between the Town of Addison, Texas and Scarborough I Airport, L.P. attached hereto as **Exhibit A**. In conformance with Subchapter C, Chapter 212, Tex. Loc. Gov. Code and the Agreement, the City's share of the costs for the Improvements shall be in an amount not-to-exceed thirty percent (30%) of the total costs for the Improvements (not including City upgrades),

which is anticipated to be \$236,192.00 in conformance with the statement of probable costs attached as Exhibit 3 to the Agreement. The City Manager is hereby authorized to execute the Agreement.

 $\underline{\textbf{SECTION 2}}.$ This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas, on this the 28^{th} day of JUNE 2022.

	TOWN OF ADDISON, TEXAS
	Joe Chow, Mayor
ATTEST:	APPROVED AS TO FORM:
Irma Parker, City Secretary	Whitt Wyatt, City Attorney

Exhibit A

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement (the "Agreement") is entered into as of the Effective Date by and between the Town of Addison, Texas, a Texas home-rule municipality (the "City") and Scarborough I Airport, LP, a Texas limited partnership (the "Company") (each a "party" and collectively the "parties").

RECITALS:

WHEREAS, City is the owner of the Addison Airport located within the City; and

WHEREAS, the Company desires to enter into (or has entered into) a ground lease for the Ground Lease Property (defined herein) with City as landlord and Company as tenant (the "Ground Lease"); and

WHEREAS, in connection with the Ground Lease, Company (as tenant) intends to re-construct and/or repair the existing aircraft apron within the Ground Lease Property (the "Site Improvements"); and

WHEREAS, the existing aircraft apron on the Ground Lease Property abuts the Aiport's Taxilane Uniform Common Area, which is owned by the City and serves as a public aeronautical access easement for the Ground Lease Property and the general aviation public; and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction of improvements related to the development of public facilities within the City; and

WHEREAS, City has determined that it would serve the best interest of the general aviation public to have the aircraft apron within the Taxilane Uniform Common Area reconstructed by Company's Contractor in conjunction with Site Improvements to the Ground Lease Property (the "Taxiway Improvements"); and

WHEREAS, City and Company desire to enter into this Agreement to set forth the parties rights and obligations with respect to the foreogoing Improvements, including City's participation in the Project costs in conformance with Section 212.071 of the Texas Local Government.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Company do hereby agree as follows:

Article I Term

The term of this Agreement shall commence as of the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall be defined as follows:

"Airport" shall mean the Addison Airport.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

"Applicable Laws" shall mean all laws, ordinances, standards, codes, statutes, rules and regulations of the United States, the State of Texas (including without limitation the Federal Aviation Administration and Texas Department of Tranportation and any and all grant agreements or assurances with same), the City (including the Airport's adopted Rules and Regulations), and any other governmental entity having jurisdiction over the subject matter of this Agreement, including all work or services to be performed in connection with the Project (including, without limitation, the standards of the Americans with Disabilities Act of 1990).

"Commencement of Construction" shall mean that (i) the Design Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the Design Plans have been issued by all applicable governmental authorities, and (iii) site preparation necessary for the construction of Improvements, as applicable, has commenced.

"Completion of Construction" shall mean: (i) the Project has been substantially completed in accordance with the Design Plans; and (ii) the Improvements have been accepted by the City in writing.

"Design Plans" shall mean the plans and specifications for the construction of the Improvements, inclusive of any change orders thereto, prepared in compliance with this Agreement by a professional architect or engineer authorized to practice in the State of Texas, which have been approved by the City.

"Effective Date" shall mean the date this Agreement has been signed by authorized representatives of City and Company.

"Force Majeure" shall have the meaning ascribed to it in Article V of this Agreement.

"Ground Lease Property" shall mean that certain tract of land located within the Airport consisting of approximately .508 acres (22,124 gross square feet) adjacent to 16445 Addison Road that Company has leased, or intends to lease from City, as further described and depicted in Exhibit 1.

"Improvements" shall mean the Site Improvements and Taxiway Improvements, collectively.

"Payment Request" shall mean Company's written request(s) to City for payment of the City's share of the Project costs prepared in conformance with Article III of this Agreement.

"Project" shall mean the construction the Improvements in conformance with this Agreement and the Construction Contract, including, without limitation, all design, administration, and construction work related thereto.

"Site Improvements" shall mean the pavement repair and reconstruction work on the aircraft apron to be performed on the Ground Lease Property, as depicted in <u>Exhibit 1</u> and more particularly described in <u>Exhibits 2 and 3</u>.

"Taxiway Improvements" shall mean the pavement repair and reconstruction work to be performed within the Taxiway Uniform Common Area, as depicted in Exhibit 1 and more particularly described in Exhibits 2 and 3.

"Taxiway Uniform Common Area" shall mean the paved land area abutting the Ground Lease Property, being approximately forty-five feet wide by one-hundred and eighty feet in length fifty-five feet within the eastern Object Free Area to Taxiway Uniform, as further described and depicted in Exhibit 1.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Article III The Project

3.1 <u>The Project</u>. Subject to the terms and conditions set forth herein, Company agrees to cause the Commencement and the Completion of the Construction of the Project as set forth herein in accordance with the Design Plans. Company shall ensure that the Project is performed in a proper, efficient, timely, and professional manner in accordance with this Agreement.

3.2 Project Construction.

- (a) Construction Contract. Company shall promptly enter into a contract with one or more contractors (the "Contractor") to construct the Project (the "Construction Contract").
- (b) Rights of Access; Utilities. City shall grant to Company and its Contractor such rights-of-access to the Project site as may be necessary for the Project, including a revocable, non-exclusive license to access and enter upon the Taxiway Improvements site for the sole purpose of constructing the same. Company's right of access is subject to the City's safety requirements within any portion of the Airport's Common Area as defined in the Rules and Regulations. Company shall be responsible for coordinating with City and utility providers to minimize the possibility of damage to utilities and any disruption to users and tenants of the Airport within proximity of the Project site.
- (c) Inspections. Company shall routinely and thoroughly inspect or cause the construction work to be inspected by the engineer that prepared the Design Plans, or other qualified licensed engineer familiar with the Design Plans, to ensure the materials and workmanship on the Project are performed in conformance with the Design Plans and to guard against defects and/or deficiencies in the Project without assuming responsibility for the means and methods used by the Contractor. Additionally, City shall have the right to inspect, test, measure, or verify the work on the Project at any time; provided that the City shall not assume any responsibility for inspection of the work or the means and methods used by the Contractor in connection with the same.
- (d) Progress Reports. Company shall keep the City regularly informed regarding the progress of the construction work on the Project. In particular, Company shall provide City written notification (including supporting documentation as may be reasonably requested by City) for the following events: (i) award of the Construction Contract (including copies of bonds and insurance), (ii) notice to proceed to Contractor, (iii) any alleged or actual default of the Contractor (including Company's notice to Contractor re the same), and (iv) substantial completion of the work on the Project (or any portion thereof) such that it is ready for final inspection by the City.
- (e) Change Orders. All change orders with respect to the design or construction of the Project must be approved in writing by the City. No change order shall result in the total Project costs identified in the approved Construction Contract exceeding one-hundred and ten percent (110%) of the anticipated Project costs, as more particularly described in the opinion of probable costs attached hereto as Exhibit 3.
- (f) Construction Schedule. Company shall cause Completion of Construction of the Project to occur not later than the 356th calendar day following the Effective Date, subject only to extension in the event of Force Majeure.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (g) Compliance with Plans; Applicable Laws. All work on the Project shall be performed in a good and workmanlike manner and constructed in accordance with the Plans and all Applicable Laws.
- (h) Inspection of Records. Company and Contractor shall grant City the right to examine or inspect, at City's election, all records relating to the Project during the Term of this Agreement and any retention period herein. City's examination or inspection of such records may be performed by a City designee, which may include an outside representative engaged by City. Company and Contractor shall retain all records relating to the Project for a minimum of four (4) years following the expriation or earlier termination of this Agreement, unless there is an ongoing dispute under this Agreement or the Construction Contract; then, such retention period shall extend until final resolution of the dispute.
- (i) Certification of No Conflicts. Company shall require Contractor to warrant that Contractor has made full disclosure to City in writing of any existing or potential conflicts of interest related to Contractor's performance of the work under the Constructgion Contract. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor shall be required to immediately make full disclosure to the City in writing.
- (j) Additional Obligations of Company. Company shall timely pay the Contractor in accordance with the terms and conditions of the Construction Contract. Upon Completion of Construction of the Project, Company shall ensure that the real property upon which the Project was constructed is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Company, any Contractor, or any subcontractor or material suppliers.
- (k) No Waiver of City's Rights. Neither City's review, approval or acceptance of, nor payment for any of the construction work performed by Contractor shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 3.3 <u>Project costs.</u> The total Project costs, including all change orders thereto, is anticipated to be \$787,307.67, as more particularly described in the statement of probable costs attached hereto as <u>Exhibit 3</u>. Although the parties anticipate the final amount of the Construction Contract may differ from the anticipated Project costs, in no event shall the total amount of the Construction Contract exceed one-hundred and ten percent (110%) of the anticipated Project costs without prior written approval of City, which may be withheld at City's sole discretion. Notwithstanding the foregoing, if the Project costs proposed by the Contractor exceeds one-hundred and ten percent (110%) of the anticipated Project costs, City and Company may agree to (i) work together to modify the Project scope to cause the Project costs not to exceed one-hundred and ten percent (110%) of the Project costs as determined above, or (ii) terminate this Agreement with each party paying their respective share of the costs (as set forth in <u>Exhibit 3</u>) incurred through the date of termination.
- 3.4 <u>City Cost Participation</u>. City has requested, and Company agrees, to construct the Taxiway Improvements for the benefit of the Airport and the public in accordance with the Design Plans in conjunction with the Site Improvements. Accordingly, City agrees to reimburse Company the City's share of the actual Project costs which Company pays its Contractor to construct the Project in conformance with the cost allocation schedule provided in <u>Exhibit 3</u> (the "<u>City Cost Participation</u>"). Notwithstanding the foregoing, in no event shall the City's reimbursement amount not exceed thirty percent (30%) of the total Project costs (excluding City requested upgrades for which the City shall be responsible for one hundred percent (100%) of the total costs).

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

The parties acknowledge that the Improvements will be owned by the City. City agrees to provide to Company and Contractor within five (5) days after the Effective Date: (a) a W-9 for the City; and (b) a copy of the City's tax exemption certificate.

- 3.5 <u>Reimbursement Procedures</u>. Subject to the terms and conditions of this Agreement, the City shall reimburse Company for the Project costs in conformance with the cost allocation schedule provided in Exhibit 3 as follows:
 - (a) Payment Requests. City agrees to pay the City Cost Participation in installments as construction progresses based on completed Payment Requests delivered by Company to City for review and approval. All Payment Requests shall include the following (which shall be conditions precedent to payment):
 - (i) a true and correct copy of the applicable invoice(s) submitted by the Contractor to Company (together with all attachments, documents, and materials applicable thereto);
 - (ii) certification from Company's design/project engineer that the Contractor's invoice is fair and reasonable for the work completed and materials delivered to the Project;
 - (iii) certification from Company that the work for which reimbursement has been requested has been completed by Contractor and paid by Company in compliance with the Construction Contract and this Agreement;
 - (iv) duly executed partial lien waivers from Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the work completed; and
 - (v) a certificate from the Design Professional that the applicable work has been completed in accordance with the Design Plans.
 - (b) Approval of Payment Request. City shall review and approve, approve in part and deny in part, or deny in its entirety each Payment Request not later than ten (10) days after receipt of the Payment Request. In the event the City denies all or a portion of a Payment Request, the City will provide a written description of the reason for the denial. Company may submit an amended Payment Request, which shall be reviewed and considered for payment in the same manner as the original. Payment Requests shall not be submitted to City more than once per calendar month and not earlier than thirty (30) days after the immediately previous Payment Request was delivered to City.
 - (c) Payment. Provided that Company is not then in default of this Agreement beyond any applicable cure period City agrees to pay Company all undisputed amounts set forth in the Payment Request (less the Retainage) not later than twenty (20) days after approval of the Payment Request by the City. Payment of City's Retainage (defined below) shall constitute the last and final payment to be made by the City to Company pursuant to this Agreement, and completion of all of the City's obligations hereunder.
 - (d) Retainage. Notwithstanding paragraph (e), above, City shall withhold an amount equal to ten percent (10.0%) of the City Cost Participation set forth in the Payment Request (the

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

"<u>Retainage</u>"). City shall not be required to pay the Retainage to Company until after Completion of Construction of the Project and Company's delivery and City's acceptance of the following:

- (i) Certification by the Design Professional (sealed by the Design Professional) that
 the Project has been fully and finally completed in accordance with the
 Construction Contract and Design Plan;
- certification from Company that the Project has been finally completed in accordance with the Construction Contract, this Agreement, and all Applicable Laws:
- (iii) the City's receipt of a written certification from Company that the final payment for the construction of the Project has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same; and
- (iv) all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Project.

Article IV Surety, Insurance and Indemnification

- 4.1 <u>Construction Sureties.</u> Company shall provide to the City evidence of the following guaranteeing the faithful performance of the Project and the payment of all obligations arising under the Construction Contract:
 - (a) Payment and Performance Bonds. Prior to Commencement of Construction Company shall provide to the City surety bonds guaranteeing the performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Project costs.
 - (b) Maintenance Bond. Company warrants and represents that it will repair or cause to be repaired any defects in the work herein contracted to be done and performed for a period of one (1) year from the date of the City's acceptance of the Project. Upon Completion of Construction of the Project, Company shall submit a surety bond guaranteeing workmanship and materials for a period of one (1) year from the Completion of Construction.
 - (c) Surety Requirements. Company shall pay or cause the Contractor to pay the premiums for all bonds required to be provided under this Section 4.1. All bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City and shall list Company and City as joint beneficiaries.
- 4.2 <u>Insurance</u>. Company shall maintain minimum insurance policies and coverages described in this section at all times during the Term of this Agreement. Company may satisfy this requirement through insurance provided by its Contractor.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
 - (i) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
 - (i) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.
- (f) The following additional requirements shall apply to the foregoing insurance policies:
 - (i) The City shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
 - (ii) All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - (iii) A waiver of subrogation in favor of the City, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
 - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
 - (v) All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
 - (vi) All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (viii) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and written on forms filed with and approved by the Texas Department of Insurance
- (x) Certificates of Insurance delivered to Company and City prior to the Commencement of Construction (or within 15 days after the Effective Date if construction has already commenced)
 - Company shall require the Contractor to require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements.
- (xi) City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

4.2 <u>Indemnification</u>

COMPANY COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY, AND SUCH ELECTED OFFICIALS, AND OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY EACH BEING AN "ADDISON PERSON"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) WORK TO BE PROVIDED BY COMPANY AND THE CONTRACTOR IN CONNECTION THE PROJECT; (2) REPRESENTATIONS OR WARRANTIES BY COMPANY UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY COMPANY, THE CONTRACTOR, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, OR LICENSEE OF COMPANY, OR ANY OTHER PERSON OR ENTITY FOR WHOM COMPANY IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, AND REPRESENTATIVES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT NOT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY ADDISON PERSON.

Notice of Claim. Company shall promptly advise the City in writing of any claim or demand against any Addison Person or Company related to or arising out of Company's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Company's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

THE PROVISIONS OF THIS SECTION 4.2, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Article V Default; Termination; Abandonment

- 5.1 <u>Default by Contractor.</u> Should Company fail to comply with any term or condition this Agreement applicable to Company, Company shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if Company's default is not corrected within twenty (20) days after written notice by City, City may, at its sole discretion and without prejudice to any other right or remedy:
 - (a) terminate this Agreement and be relieved of any further payment or consideration to Company except for reimbursement, pursuant to an approved Payment Request, of the City's portion of the Improvements determined by City to be satisfactorily completed prior to such termination; or
 - (b) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Company's sole expense.
- 5.2 <u>Default by City</u>. Should City fail to comply with any term or condition this Agreement applicable to City, City shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if City's default is not corrected within twenty (20) days after written notice by Company, Company may terminate this Agreement.
- 5.3 Extension of Initial Cure Period. During the initial cure period, if the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter continuously and diligently prosecutes the curing of such default, the initial cure period shall be extended for such period as may be necessary to cure such default, provided, that in no event shall such extension exceed forty (40) days following the initial occurrence of the default without the written consent of the non-defaulting party, which may be withheld in the non-defaulting party's sole discretion.
- 5.4 <u>Termination by City</u>. The City may terminate this Agreement without notice or any opportunity upon the occurrence of any of the following:
 - (a) Adjudicated insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, Company;
 - (b) Filing of a petition under any section 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 the Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company;
 - (c) Appointment of a receiver or trustee for all or substantially all of the assets of the Company;
 - (d) Abandonment of the Project pursuant to Section 5.5, below; or

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (e) The Company is in default of any ground lease or other lease or arrangement with the City beyond the expiration of applicable notice and cure periods.
- Abandonment. Notwithstanding any other provision of this Agreement, If Company and/or the Contractor should abandon and fail or refuse to resume the Project within ten (20) days after written notification from City to Company, then, the surety on the performance bond(s) may be notified in writing by City of such abandonment and directed to complete the Project, with a copy of said notice delivered to Company and Contractor. After receiving said notice of abandonment, neither Company nor Contractor may remove from the Project site any machinery, equipment, tools, materials or supplies then on site, and the same, together with any materials and equipment under contract for the Project may be held for use on the Improvements by the City or the surety on the performance bond(s), or another contractor in completion of the Project. In such event neither Company nor Contractor shall receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the Project and be reflected in the final settlement of the City's Cost Participation under this Agreement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the Project in either of the following elective manners:
 - (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Company, which may be paid by City out of the City's allocated share of the Project costs and applied as a credit to City's Cost Participation, or any other amounts that may at any time become due to the Company under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the City; or
 - (2) the City may (under sealed bids when and in the manner required by law) let the contract to another contractor for the completion of the Project under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what the City would have been obligated to pay under this Agreement, such increase shall be charged to the Company and Company's sureties shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith.
- 5.6 <u>Remedies Cumulative</u>. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided in this Article.
- 5.7 <u>Force Majeure</u>. No party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each an event of "<u>Force Majeure</u>"). The party asserting Force Majeure shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii)

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Article VI Miscellaneous

- 6.1 No Joint Venture. Company is an independent contractor, and Company shall accomplish all of its obligations under this Agreement in such capacity. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties (or between City and Contractor). The City shall have no control or supervisory powers as to the detailed manner or method of Company's performance of the subject matter of this Agreement nor the Contractor's means and methods of construction related to the Project.
- 6.2 <u>Assignment.</u> Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.
- 6.3 No Third Party Beneficiaries. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
- 6.4 <u>Survival</u>. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.
- 6.5 No Waiver. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.
- 6.6 <u>Exhibits</u>. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.
- 6.7 Governing Law. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; 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. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.
- 6.8 Entire Agreement. This Agreement supersedes all previous agreements regarding the matters set forth herein and constitutes the entire understanding of the parties. Company shall be entitled to

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Except for the obligations of Company under this Agreement, neither Company nor any other owner of the Property shall have any further obligations under the Master Facilities Agreement.

- 6.9 <u>Severability</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 6.10 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

To City:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001 Email: wpierson@addisontx.gov To Company:

Scarborough Airport I, LP 16380 Addison Road Addison, Texas 75001 Attn: Mr. James R. Feagin jfeagin@landmarkinterests.com

and

Town of Addison, Texas c/o Assistant Director – Real Estate 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Email: bill.dyer@addisonairport.net

6.11 <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 Agreement on behalf of the parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY – SIGNATURES ON FOLLOWING PAGE(S)]

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

IN WITNESS WHEREOF, the parties hav Effective Date.	ve executed and delivered this Agreement as of the
For City:	For Company:
Town of Addison, Texas	Scarborough Airport I, LP a Texas limited partnership
By: Wes Pierson, City Manager Date:	By: Scarborough I Airport GP, LLC, a Texas limited liability company, its general partner By: James R. Feagin, Manager
	Date:

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 1

PROJECT SITE DESCRIPTION

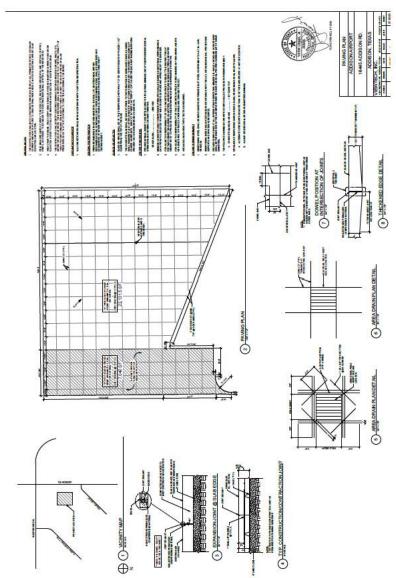
DEPCTION OF SCARBOROUGH SITE IMPROVEMENTS AND CITY TAXIWAY CITY IMPROVEMENTS



Exhibit 1: Project Site Description Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 2

DESIGN PLANS



Full Size Drawing Available in City Airport Archives

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

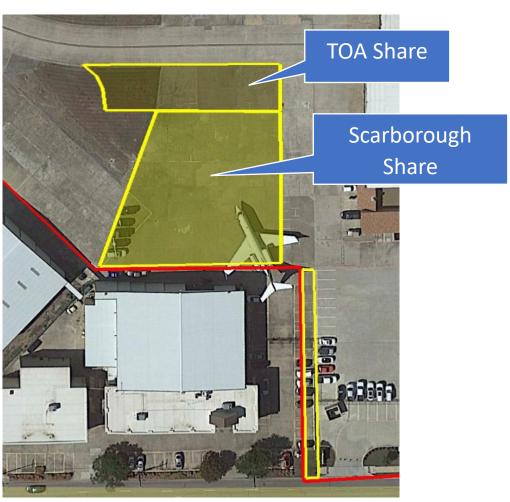
${\bf EXHIBIT~3} \\ {\bf DESIGN~PROFESSIONAL'S~STATEMENT~OF~PROBABLE~COST}$

			SCARBOROU	ADDISON AIRPORT SCARBOROUGH DEVELPEROR PARTICIPATION ALLOCATION OF PROJECT COST REVISED 6/20/2022	PORT COR PARTICIPA COJECT COST 6/20/2022	NOIL				
							COMPANY	CITY SHARE	CITY UPGRADE ALLOWANCE	CITY TOTAL SHARE
CN	WORK/MATERIAL DESCRIPTION	City	QUANTITY ESTIMATED		LINIT PRICE	PROJECT COSTS	%UZ	%UE	100%	
-	Demolish 6" existing paving	No	L	0	\$4.35	\$137,529.60	\$96,270.72	\$41,258.88	\$0.00	\$41,258.88
2	2 Excavate and hauloff 4" of cut	No	S.Y.	410.00	\$44.55	\$18,265.50	\$12,785.85	\$5,479.65	\$0.00	\$5,479.65
3	3 Lime stabilize 6" of subgrade as per report	No	S.F.	31,616.00	\$1.75	\$55,328.00	\$38,729.60	\$16,598.40	\$0.00	\$16,598.40
4	4 Place / finish 10" concrete with steel as per plans	No	S.F.	31,616.00	\$15.80	\$499,532.80	\$349,672.96	\$149,859.84	\$0.00	\$149,859.84
5	5 Saw cutting as per plans	No	S.F.	31,616.00	\$0.17	\$5,374.72	\$3,762.30	\$1,612.42	\$0.00	\$1,612.42
9	6 Sealant as per plans	No	S.F.	31,616.00	\$0.25	\$7,904.00	\$5,532.80	\$2,371.20	\$0.00	\$2,371.20
7	Construction staking and grades	No	EA.	1.00	\$4,167.50	\$4,167.50	\$2,917.25	\$1,250.25	\$0.00	\$1,250.25
8	8 Traffic control	No	EA.	1.00	\$3,570.00	\$3,570.00	\$2,499.00	\$1,071.00	\$0.00	\$1,071.00
6	9 Builder risk policy	No	EA.	1.00	\$4,165.00	\$4,165.00	\$2,915.50	\$1,249.50	\$0.00	\$1,249.50
10	10 \$ 5 mil - mbrella policy	No	EA.	1.00	\$5,950.00	\$5,950.00	\$4,165.00	\$1,785.00	\$0.00	\$1,785.00
11	11 Performance bond	ON	EA.	1.00	\$21,338.55	\$21,338.55	\$14,936.99	\$6,401.57	\$0.00	\$6,401.57
12	12 General Conditions	ON	EA.	1.00	\$24,182.00	\$24,182.00	\$16,927.40	\$7,254.60	\$0.00	\$7,254.60
13						\$0.00	\$0.00	00'0\$	\$0.00	\$0.00
14						\$0.00	\$0.00	00'0\$	\$0.00	\$0.00
15						\$0.00	\$0.00	00.0\$	\$0.00	\$0.00
16						\$0.00	\$0.00	00'0\$	\$0.00	\$0.00
						\$787,307.67	\$551,115.37	\$236,192.30	\$0.00	\$236,192.30
50	AREA CALCULATION:				Abbreviation Key	Key				
651	Scarborough area as per plan	70%	70% 22,131.50 sf		SY = Square Yards	ırds				
-	City of Addison area proposed area	30%	30% 9,484.50 sf	sf	CY=Cubic Yards	S				
DE.	Total square feet	100%	100% 31,616.00 sf	sf	LF= Linear Feet	,				

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Proposed Project Site East-end of Taxiway Uniform Near 16445 Addison Road at Addison Airport





Council Meeting 16.

Meeting Date: 06/28/2022

Department: Airport

Pillars: Excellence in Transportation Systems

Milestones: Leverage the new Customs facility to promote international travel use

of the Airport

Leverage the use of the Airport to maximize business growth and

expansion

AGENDA CAPTION:

Present, Discuss, and Consider Action a <u>Resolution Approving an</u>

<u>Assignment of Ground Lease Between Scarborough I Airport, L.P. and Bel</u>

<u>Air Communities, LLC for the Purpose of Assigning Leasehold Interest in</u>

<u>Certain Airport Land Consisting of a Total of .55 Acres of Taxilane Uniform</u>

<u>Located at the Addison Airport and Authorizing the City Manager to</u>

<u>Execute the Consent of Landlord.</u>

BACKGROUND:

Scarborough I Airport, L.P. ("Scarborough") and the Town of Addison intend to execute and enter into a ground lease agreement ("Ground Lease") affecting .55 acres of airport land ("Leased Premises") abutting and adjacent to the off-airport property located at 16445 Addison Road, subject to the Town's consent. Pursuant to the terms of the Ground Lease, Scarborough has the option to extend the lease term to forty (40) years provided they reconstruct all the aircraft apron improvements on the Leased Premises and a portion of Taxiway Uniform common area adjacent to the Leased Premises ("Airport Improvements") pursuant to a separate Developer Participation Agreement by and between the Town and Scarborough.

Upon Scarborough's satisfactory completion and the Town's full acceptance of the reconstructed Airport Improvements, Scarborough is requesting the Town to give its consent to Scarborough's assignment of the Ground Lease and the improvements made to the Leased Premises to Bel Air Communities, LLC, a Delaware limited liability company ("Bel Air Communities"). It is a condition of the buy/sell agreement between Bel Air Communities and Scarborough for Scarborough to satisfactorily reconstruct the aircraft apron and formally secure from the Town the extend lease term. Section 9 of the Ground Lease requires the Landlord to give its prior written consent to any sale, assignment or any other form conveyance of the Ground Lease.

Bel Air Communities is a Plano-based national real estate developer and owner

of multi-family and residential communities. Mr. Jerry Guerrero is the owner and manager of Bel Air Communities, LLC. Bel Air Communities is acquiring the off-airport fee simple property located at 16445 Addison Road together with the Leased Premises subject to the Ground Lease to use the existing aeronautical facilities in support of their corporate flight department operations and based aircraft.

The Assignment of Ground Lease, for which the Town will give its consents, obligates Bel Air Communities to all the terms and conditions of the Ground Lease Agreement. Furthermore, Scarborough remains liable and is not released of its covenants, obligations, duties, or responsibilities under the ground lease.

The city attorney has reviewed the Assignment of Ground Lease Agreement and Consent of Landlord and finds both to be acceptable for the Town's purposes. It is to be noted that the Consent of Landlord executed by the City Manager will be delivered at such time in trust to the escrow agent administering the transaction between the parties, which agreement shall be fully executed by the parties at the closing of the transaction. The escrow agent will be instructed to provide the Town of Addison with a publicly recorded copy of the document for its records.

Approval of the assignment is subject to Scarborough then not being in default of the Ground Lease and satisfactorily achieving Final Completion of the Airport Improvements as defined in the Developer Participation Agreement.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Assignment of Ground Lease Scarborough I Airport LP Location Map

RESOLUTION NO.	•
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ARESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN ASSIGNMENT OF GROUND LEASE BETWEEN SCARBOROUGH I AIRPORT, L.P. AND BEL AIR COMMUNITIES, LLC FOR THE PURPOSE OF ASSIGNING SCARBOROUGH I AIRPORT, L.P.'s LEASEHOLD INTEREST IN CERTAIN AIRPORT LAND CONSISTING OF A TOTAL OF .55 ACRES OF TAXILANE UNIFORM LOCATED AT THE ADDISON AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSENT OF LANDLORD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City (as Landlord) and Scarborough I Airport, LP ("Scarborough") (as Tenant) desire to execute a ground lease (the "Ground Lease") for certain improved land at the Addison Airport consisting of approximately .55 acres along Taxiway Uniform (the "Subject Property"), as more particularly described in the Assignment of Ground Lease (the "Assignment") attached hereto as Exhibit A; and

WHEREAS, the City's execution of the Assignment is subject to (i) Scarborough achieving final completion of the improvements to the Subject Property in conformance with the Ground Lease and that certain Developer Participation Agreement approved by the City Council on June 28, 2022 (Ordinance 22-__), and (ii) Scarborough being in good standing without any uncured default under the Ground Lease; and

WHEREAS, Scarborough desires, following execution of the Ground Lease and subject to the foregoing conditions, to assign its interest in the Ground Lease to Bel Air Communities, LLC, in accordance with the terms and conditions of the Assignment; and

WHEREAS, the City Council desires, following execution of the Ground Lease and subject to the foregoing conditions, to consent to the Assignment and authorize the City Manager to execute the Consent of Landlord related thereto, a copy of which is attached to and included with the Assignment in **Exhibit A**.

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

SECTION 1. The City Council, subject to execution of the Ground Lease and Scarborough's successful completion of the conditions set forth in the recitals above, hereby consents to the Assignment of Ground Lease between Scarborough I Airport, L.P., a Texas limited partnership, and Bel Air Communities, LLC, a Delaware limited liability company, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the Consent of Landlord attached thereto.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 28th day of JUNE 2022.

Town of Addison, Texas Resolution No.

Joe Chow, Mayor ATTEST:

TOWN OF ADDISON, TEXAS

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS	§ 8 A	SSIGNMENT	OF GROUND LI	FASE
COUNTY OF DALLAS	§ A	SSIGIVILIVI	or GROUND E	LASE
This Assignment of	of Ground Lease	(the "Assignme	ent") is entered	into and
effective as of	20 ,	at Addison,	Texas, by and	between
Scarborough I Airport,	L.P., a Texas lin	mited partnersh	ip (herein referr	ed to as
"Assignor") and Bel Air				
(herein referred to as "Assig	KRS -		•	1 0
WHEREAS, a Gro	und Lease was ex	ecuted on		
between the Town of Ac		200 00 00	rport of Texas, tain airport land o	100
of a total of .55 acres from	nting Taxilane Uni	iform at Addisc	on Airport adjaces	nt to and
abutting the fee simple promore specifically described	1			
WHEDDAG			0.1	A.A.

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

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

WHEREAS, a true and correct copy of the Ground Lease as described above is attached hereto as Exhibit "B" and incorporated herein by referenced.

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

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee, effective as of the date above, all of Assignor's right, title, duties, responsibilities, and interest in and to the Ground Lease, TO HAVE AND TO HOLD the same, for the remaining term thereof, and Assignor does hereby bind itself and its successors and

Page 1 of 7

Town of Addison, Texas Resolution No. ____

assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming a part thereof through Assignor.

- 2. Prior to the effective date of this Assignment, Assignee agrees to pay an Assignment Fee in the amount of One Thousand Dollars and no/100 (\$1000.00) to Landlord.
- 3. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Ground Lease which occur on or after the date hereof. For purposes of notice under the Ground Lease, the address of Assignee is:

c/o Bel Air Communities, LLC 2800 N. Dallas Parkway Suite 101 Plano, Texas 75093

- 4. Nothing in this Assignment shall be construed or be deemed to modify, alter, amend or change any term or condition of the Ground Lease, except as set forth herein.
- 5. The above and foregoing premises and recitals to this Assignment are incorporated and made part of this Assignment, and Assignor and Assignee both warrant and represent that such premises and statements, and all other provisions of this Assignment, are true and correct, and that in giving consent, Landlord (as defined in the Consent of Landlord attached hereto) is entitled to rely upon such representations and statements.
- 6. This Assignment is subject to the consent and filing requirements of the Town of Addison, Texas.
- 7. Assignor acknowledges that in addition to any other remedies provided in the Ground Lease or by law, Landlord may at its own option, collect directly from the Assignee all rents becoming due under such assignment and apply such rent against any sums due to Landlord. No such collection by Landlord from any such Assignee or subtenant shall release Assignor from the payment or performance of Assignor's obligations under the Ground Lease.
- 8. The undersigned representatives of the Assignor and Assignee have the necessary authority to execute this Assignment on behalf of each of the respective parties hereto, and Assignor and Assignee certify one to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

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

Assignor:	Assignee:	
By:	By:	
Printed Name:	Printed Name:	
Title:	Title:	

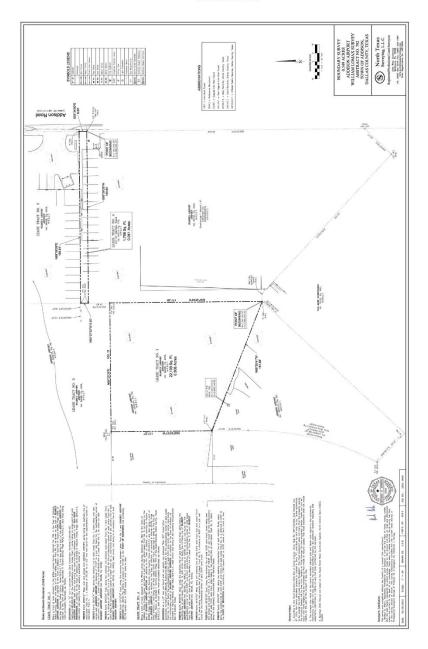
ACKNOWLEDGMENT

COUNTY OF DALLAS §
BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose
known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he, she) executed the same for the purposes and consideration therein stated.
GIVEN under my hand and seal of office this day of, 20
[SEAL]
Notary Public, State of Texas
STATE OF TEXAS § COUNTY OF DALLAS §
BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose
name is subscribed to the foregoing instrument, and acknowledged to me that (he, she) executed the same for the purposes and consideration therein stated.
GIVEN under my hand and seal of office thisday of, 20
[SEAL]
Notary Public, State of Texas

CONSENT OF LANDLORD

The Town of Addison, Texas ("Landlord") is the Landlord in the Ground Lease described in the Assignment of Ground Lease (the "Assignment") entered into and effective as of 20, at Addison, Texas, by and between
Scarborough I Airport, L.P., a Texas limited partnership (herein referred to as "Assignor") and Bel Air Communities, LLC, a Delaware limited liability company
(herein referred to as "Assignee"). In executing this Consent of Landlord, Landlord is relying upon the warranty and representations made in the foregoing Assignment by both
Assignor and Assignee, and in relying upon the same Landlord hereby consents to the foregoing Assignment from Assignor to Assignee. Notwithstanding this Consent, Landlord does not waive any of its rights under the Ground Lease as to the Assignor or
the Assignee, and does not release Assignor from its covenants, obligations, duties, or responsibilities under or in connection with the Ground Lease, and Assignor shall remain liable and responsible for all such covenants obligations, duties, or responsibilities. In
addition, notwithstanding any provisions of this Consent of Landlord or the above and foregoing Assignment to the contrary, this Consent shall not operate as a waiver of any prohibition against further assignment, transfer, conveyance, pledge, change of control, or subletting of the Ground Lease or the premises described therein without Landlord's
prior written consent.
This Consent shall be and remain valid only if and provided that, by no later than 6:00 o'clock p.m. on December 30, 2022:
(i) the Assignment has been executed and notarized by both Assignor and Assignee,
(ii) all other matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease have been fully consummated and completed and the transaction closed as reasonably determined by Landlord (such matters including, without limitation, the full execution and finalization of this Assignment and any other documentation so required by Landlord relating to this transaction) and delivered to Landlord c/o Mr. Bill Dyer, Addison Airport Real Estate Manager, at 4545 Jimmy Dolittle Road, Suite 200, Addison, Texas 75001. Otherwise, and failing compliance with and satisfaction of each all of paragraphs (i) and (ii) above, this Consent shall be null and void <i>ab initio</i> as if it had never been given and executed.
Signed this, 20
LANDLORD:
TOWN OF ADDISON, TEXAS
By:
, City Manager

EXHIBIT A



Lease Tract No. 1 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T.

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being all of that called Lease Tract No. 1, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said tract being more particularly described, as follows:

BEGINNING at an "X" cut in concrete found (Grid Coordinate: Northing=7,041,461.90', Easting=2,480,265.52) for the southeasterly corner Lease Tract 1, same being an angle point of said ADDISION AIRPORT, said corner also being the most northerly northwest corner of the VAN-HOFF SUBDIVISION, an addition to the Town of Addison, as recorded in Volume 79122, Page 1831, M.R.D.C.T., said corner also being the most westerly southwest corner of;

THENCE North 68°50'41" West, over and across said ADDISION AIRPORT, same being the southerly line of said Lease Tract No. 1, a distance of 161.58' to a 1/2" iron rod found for the southwesterly corner of said Least Tract 1;

THENCE North 00°34'31" West, along the westerly line of said Lease Tract No. 1, same being over and across said ADDISION AIRPORT, a distance of 117.57' to a p.k. nail found for the northwesterly corner of said Lease Tract No. 1, same being in the southerly line of Lease Tract No. 2, as shown on said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 89°25'29" East, along the common line between said Lease Tract No. 1 and Lease Tract No. 2, a distance of 150.13' to a p.k. nail found for the northeasterly corner of said Lease Tract No. 1, same being the southeasterly corner of Lease Tract No. 2, said corner being in the westerly line of said BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), said corner also being in an easterly line of said ADDISION AIRPORT;

THENCE South 00°33'53" East, along the common line between Lease Tract No. 1 and BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 177.39' to the POINT OF BEGINNING and containing 22,139 square feet or 0.508 acres of land, more or less.

Lease Tract No. 4 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being a part of that called Lease Tract No. 3, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., and being all of that called 0.041 acre tract, described in deed to the City of Addison, Texas, as recorded in Volume 84214, Page 773, of the Deed Records, Dallas County, Texas (D.R.D.C.T.), said tract being more particularly described, as follows:

BEGINNING at a 1/2" iron rod found with red plastic cap stamped "DAL-TEC" found (Gird Coordinate: Northing=7,041,666.08, Easting=2,480,463.33') for the southeasterly corner of said Lease Tract No. 3, same being the southeasterly corner of said 0.041 acre tract, said corner also being the northeasterly corner of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said corner also being in the westerly monumented line of Addison Road;

THENCE South 89°26'29" West, along the southerly line of said 0.041 acre tract, same being the southerly line of said Lease Tract No. 3, said corner also being the northerly line of BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 199.80' to a p.k. nail found for the southwesterly corner of said 0.041 acre tract, same being the southwesterly corner of said Lease Tract No. 3, said corner also being in the easterly line of Lease Tract No. 2, of said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 00°37'52" West, along the westerly line of said 0.041 acre tract and said Lease Tract No. 3, same being the easterly line of said Lease Tract No. 2, a distance of 9.00' to a p.k. nail found for the northwesterly corner of said 0.041 acre tract;

THENCE North 89°26'29" East, along the northerly line of said 0.041 acre tract, same being over and across said Lease Tract No. 3, a distance of 199.81' to an "X" cut found for the northeasterly corner of said 0.041 acre tract, same being in the easterly line of said Lease Tract No. 3, same being in the westerly monumented line of Addison Road;

THENCE South 00°34'00" East, along the westerly monumented line of said Addition Road, same being the easterly line of said 0.041 acre tract and said Lease Tract No. 3, a distance of 9.00' to the POINT OF BEGINNING and containing 1,798 square feet or 0.041 acres of land, more or less.

EXHIBIT B



Town of Addison

Ground Lease Agreement

Addison Airport

Made Effective :

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- <u>Exhibit 1</u>: Legal Description of Addison Airport
- Exhibit 2: Description of Demised Premises (Property Survey)
- . Exhibit 3: Memorandum of Lease Form
- Exhibit 4: Pavement Inspection Report
- Exhibit 5: Developer Participation Agreement
- Ground Lease Addendum#1
- Ground Lease Addendum #2

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("<u>Lease</u>" or "<u>Agreement</u>") is made and entered into as of , 202_ (the "<u>Effective Date</u>"), by and

among the <u>Town of Addison</u>, <u>Texas</u>, a Texas home-rule municipality (hereinafter sometimes referred to as "<u>Landlord</u>" or the "<u>City</u>", and <u>Scarborough I Airport</u>, <u>L.P.</u>, a Texas limited partnership (hereinafter referred to as "<u>Tenant</u>") (Landlord and Tenant are sometimes referred to herein together as the "<u>Parties</u>").

WITNESSETH:

WHEREAS, the City is the record title owner of the Addison Airport, a description of which is set forth in Exhibit 1 attached hereto and incorporated herein (the "Airport"); and

WHEREAS the Airport is operated and managed by the City or by any person or entity authorized by the City to manage and/or operate the Airport on its behalf (the "Airport Manager"); and

WHEREAS, Landlord and Tenant desires to enter into this Ground Lease Agreement wherein the City leases to Tenant and Tenant leases from the City, a certain portion of the Airport described hereinafter as:

Two parcels of land totaling .549-acres (23,937 square feet) described as Lease Tract No.1, being a certain .508-acre (22,139 square feet) parcel of land, and Lease Tract No. 4, a detached .041-acre (1,798 square feet) parcel of land, both of which are located within Addison Airport and more particularly described respectively in the Boundary Survey prepared by North Texas Surveying, L.L.C.; Job No. 2022-0058 dated May 26, 2022 ("Property Survey") shown in Exhibit 2 attached hereto and incorporated herein by reference (the "Demised Premises"), together with the non-exclusive right to use the Common Facilities as defined in Section 17.

WHEREAS, Landlord and Tenant desire to enter in to this Ground Lease Agreement, which shall commence immediately upon the Effective Date and the simultaneous early termination of that certain Aircraft Storage Rental Agreement dated February 11, 2022, entered into by Landlord and Tenant (the "Prior Agreement"); the Ground Lease shall supersede the Prior Agreement in its entirety without interruption; and

WHEREAS, Tenant is the fee simple owner of the real property located at 16445 Addison Road, which is immediately adjacent to and abutting the Demised Premises described below; Tenant desires to use the Demised Premises in connection with their aeronautical operations located at 16445 Addison Road; and

WHEREAS, Tenant currently holds a valid Airport Access Permit issued by the City granting Tenant the right to access and use the Airport's common facilities from its fee property located at 16445 Addison Road; and

WHEREAS, the Parties hereby acknowledge and agree the foregoing recitals are true and correct and are incorporated herein and made a part hereof statements are true and correct.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

In consideration of and subject to the terms, covenants, and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation) whether now existing or hereafter enacted, adopted or imposed and including, without limitation, any and all grant agreements or grant assurances, the Airport's Rules and Regulations, and the Airport's Minimum Standards (as they may be amended or modified by Landlord from time-to-time); (ii) all restrictive covenants affecting the Demised Premises; (iii) all restrictions, easements, and other encumbrances or matters affecting the Demised Premises. whether of record or not or which could be revealed by a survey of the Demised Premises; and (iv) all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust, or monetary liens affecting the Demised Premises which are not filed of record.

Section 2. Term:

A. Base Term.

Provided Tenant is then not in default beyond the expiration of applicable notice and cure periods under any other lease, license, or agreement with the City, and subject to the early termination of this Agreement and all other provisions of this Lease, the term hereof (the "Base Term") shall commence on the Effective Date, (the "Commencement Date") and shall end the last day of the twenty-fourth (24th) full calendar month following the Commencement Date (the "Expiration Date"). If Tenant is in default beyond the expiration of applicable notice and cure periods under any agreement with the City as of the Commencement Date, this Agreement shall not commence until either (i) Tenant has satisfactorily remedied said default as provided for in the defaulted agreement or, (ii) the City, at its sole discretion, early terminates this Agreement ab inito

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by written notice with neither party having any further duty or obligation to the other under this Agreement.

B. Extended Term Option.

Provided Tenant (i) is not then in default beyond the expiration of applicable notice and cure periods under this Agreement or any other agreement with Landlord, and (ii) achieves Final Completion of the New Land Improvements as defined in Ground Lease Addendum #1 (attached hereto and incorporated herein by reference) on or before the Expiration Date, the Base Term shall be extended so that this Lease will end the last day of the four hundred eightieth (480th) full calendar month following the Commencement Date ("Extended Term Period"). Should Tenant earn and qualify for the Extended Term Period, the Parties hereby mutually agree to execute and record a Memorandum of Ground Lease substantially in the form of Exhibit 3 attached hereto this Ground Lease and incorporated herein by reference, memorializing the modified Base Term ("Extended Term"). Should Tenant fail to complete the New Land Improvements as required pursuant to Ground Lease Addendum #1, Tenant shall not be entitled to this Extended Term causing the Base Term to remain unchanged except for as adjusted, if any, pursuant to Section 4 - Adjustment of Rent.

Section 3. Rent; Security Deposit:

A. Subject to adjustment as set forth below, Tenant shall pay to Landlord, without notice, demand, offset, or deduction, Rent each month over the Term for the Demised Premises as set forth below:

Base Rent:

Tenant agrees to, and shall pay Landlord, annual Rent for the Demised Premises an amount calculated to be the product of \$.55 times the gross square feet of the Demised Premises as determined by the Property Survey (e.g. \$.55 x 23,937 gross square feet = \$13,165.35), which amount shall be paid by Tenant in twelve (12) equal monthly payments of One Thousand Ninety-Seven Dollars and 11/100 (\$1.097.11), on or before the first day of each calendar month, which is subject to adjusted as set forth herein. All Rent is due on or before the first day of each month and is considered delinquent if not received by the tenth (10th) day of each month and subject to the provisions of Section 39.

- For purposes of this Lease, the term "Rent" shall mean Base Rent and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for nonpayment of Base Rent.
- B. Security Deposit:

No Security Deposit required.

Section 4. Adjustment of Rental:

- A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the "<u>Adjustment Date</u>"), the monthly Rent due under <u>Section 3.A.1</u>. (Base Rent) shall be adjusted as follows:
 - 1. Annual Rent (including Base Rent) shall be adjusted to reflect changes in the Consumers' Price Index All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication Consumer Price Index for All Urban Consumers (CPI-U) for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing as of the Commencement Date. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.
 - 2. Beginning with the first full month following the then applicable Adjustment Date, the annual Rent (including the Base Rent)) shall be adjusted so that it equals the product of the annual Rent (including the Base Rent) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the "Adjusted Rental"), but in no event shall such annual Rent (including the Base Rent) ever be decreased below the Base Rent set forth in Section 3.A.1.
 - If the Consumer Price Index is unavailable for whatever reason for the
 computations set forth hereinabove, another index approximating the Consumer Price
 Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

Section 5. Use of Demised Premises:

A. Permitted Uses:

- For the storage of air-worthy aircraft and equipment used in connection with Tenant's aeronautical operations;
- 2. Incidental support and services in connection with aircraft stored or based at the Leased Premises, including light maintenance and repair.

B. Prohibited or Restricted Use of Demised Premises:

The following uses are expressly prohibited without Landlord's prior written consent:

- Retail services including food sales, alcoholic beverages sales, and pilot-supply sales; barber and valet services; newsstands and gifts; and
- Storage of non-airworthy aircraft for a period greater than fourteen (14) consecutive days without the prior written consent of the Airport Manager.
- Any illegal purpose or any other activity (federal, state, county, and municipal laws, rules, regulations, standards, and policies) that, in Landlord's reasonable opinion, would

create a nuisance, unreasonably disturb other tenants of the Airport, or which may cause an increase in Landlord's insurance costs, whether such increased costs are actually incurred or not; and

- Aviation fueling operations of any kind without a valid fuel dispensing permit issued by the Town of Addison.
- Any non-aeronautical use or purpose including, but not limited to, the parking of vehicles not required for Tenant's aeronautical operations.
- C. [Intentionally Omitted].
- D. Tenant acknowledges that Landlord is bound by the terms and conditions of all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to knowingly take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.
- E. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that to the extent that the Demised Premises are used for commercial purposes that (i) no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.
- F. To the extent the Demised Premises is used for commercial purposes, Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Section 6. Land Improvements:

A. Existing Land Improvements:

For the purpose of this Lease, the term "Existing Land Improvements" shall mean those real property improvements, if any, made to the Demised Premises in their "as is", "where is" condition together with all faults and patent and latent defects on or before the Effective Date of

this Agreement, including but not limited, to the existing paved aircraft parking apron in its used and depreciated condition, which Tenant accepts pursuant to Section 7 below.

B. New Land Improvements:

See Ground Lease Addendum #1 attached hereto and incorporated herein by reference.

C. Future Land Improvements:

Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other Future Land Improvements (as defined in Ground Lease Addendum #2) upon the Demised Premises without the prior written consent of Landlord. See <u>Ground Lease Addendum #2</u> attached hereto and incorporated herein by reference.

D. Land Improvements:

The term "Land Improvements" as used herein shall mean all real property improvements constructed, erected, affixed or other made on or to the Demised Premises including but not limited to the Existing Land Improvements, New Land Improvements and All Future Land Improvements defined above during the Term, but excluding any personal property and trade fixtures owned by Tenant (including aircraft stored on the Demised Premises).

Section 7. Acceptance of Demised Premises:

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE. DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER. INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN (OR WILL BE) ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS

AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY. PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide Rent to Landlord on a Net Return Basis, as set out in <u>Section 32</u>.

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

A. Tenant at Tenant's sole cost and expense shall obtain all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, 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) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) all grant agreements or grant assurances now existing or as hereafter agreed to, adopted, or imposed.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (as of the Effective Date, the Airport Manager is as set forth in the Recitals, above, but the Airport Manager may be changed or modified by the City, and for purposes of this Lease the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or

operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Land Improvements pursuant to the Design Plan.

B. Tenant shall always comply with all noise abatement standards at the Airport, shall notify any employee, guest or invitee of Tenant, including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

Section 9. Assignment; Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:

Without the prior written consent of Landlord (which consent maybe granted or withheld in Landlord's sole and absolute discretion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) nor sublet in whole or in part any portion of the Demised Premises, and 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 Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Lease (which, in the case of a sublease, may be limited to the applicable obligations delegated to the subtenant). No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and 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. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or

proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.

- B. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting aircraft storage only, provided that each sublease is evidenced by written agreement, signed, and executed by Tenant and sublessee and fairly states:
 - I. In the event of any conflict between the terms of this Lease and the terms of the sublease, the terms of this Lease shall control; provided, that the subtenant shall not be required to pay Rent under this Lease and shall only be required to perform obligations under this Lease which are delegated to the subtenant under its sublease;
 - Such subletting shall not constitute a novation;
 - 3. In the event of occurrence of an event of default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such subtenant all Rents becoming due under such subletting and apply such Rent against any sums due to Landlord hereunder:
 - Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease;
 - 5. Any such sublease is to automatically terminate upon termination of this Lease notwithstanding any other provision of the sublease to the contrary;
 - Landlord shall have no responsibility or obligation for the performance by Tenant
 of its obligations under the sublease;

Neither Landlord's consent to a sublease, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee. Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any violation of any terms and conditions of this Lease by a sublessee may constitute a default under this Lease.

C. If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include, in addition to any other information or materials that Landlord may request: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) financial statements or other evidence of the proposed assignee to perform its obligations under this Lease.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date (or any assignee of Tenant on the date of such assignment), or partnerships or trusts formed by such persons for estate planning purposes, or affiliates of any such persons, cease to own or have voting control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification confirming that no such assignment has occurred without Landlord's consent, if such consent is required hereunder. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or otherwise.

- D. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the New Land Improvements described in Section 6, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the Rent due hereunder and otherwise fully perform the terms and conditions of this Lease.
- E. All mortgages or deeds of trust whereby Tenant mortgages the leasehold estate of Tenant created hereby shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said mortgages or deeds of trust.
- F. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate

this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

- Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee or its successors and assigns after foreclosure or transfer in lieu of foreclosure shall not and does not have the right and shall not and does not have the power to assign (as defined in subsection A. of this Section above) this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgage of such proposed leasehold mortgagee.
- H. Upon request by Landlord, Tenant shall provide to Landlord a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes a default of this Lease, subject to notice and cure as provided in Section 23(B).

Section 10. Property Taxes and Assessments:

Tenant shall pay, before they become delinquent, all property taxes or assessments, and any other governmental charges, fees, or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to affect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense,

Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof. Notwithstanding the foregoing, Tenant shall not contest the determination that the buildings and/or improvements are subject to taxation. If a final (non-appealable) determination is rendered by DCAD or a court of appropriate and competent jurisdiction that any such buildings or other improvements are not subject to property taxation, the Rent (as the same may be adjusted) for the year in which such final determination becomes effective shall be increased by an amount equal to the property tax revenue from such buildings and improvements that Tenant would have paid to the Town of Addison, Texas in that year but for such final determination (and such initial increased amount shall be paid to Landlord on or before December 31 of such year, unless otherwise agreed to by Landlord); thereafter, the Rent (as the same may be adjusted) as so increased shall continue, subject to adjustment as set forth in this Lease.

Section 11. Maintenance and Repair of Demised Premises:

- A. Tenant shall, throughout the Term hereof, maintain in good repair and in a first class condition as set forth herein and all applicable ordinances, codes, rules and regulations of, or adopted by the Town of Addison, Texas all the Demised Premises and all improvements, fixtures, equipment and personal property on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition in accordance with the construction and/or maintenance standards set forth herein and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment, if any, situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised Premises.
- B. Provided Tenant is entitled to the Extended Term set forth in Section 2.B above, Tenant shall deliver to Landlord within sixty (60) days of the fifth (5th) anniversary of the Commencement Date of this Agreement, a completed and signed and dated Pavement Inspection Report ("PIR") (if performed by licensed professional engineer, the PIR is to be signed and stamped by the licensed engineered) generally in the form and content as given in Exhibit 4 attached hereto and incorporated herein by reference. The PIR may be performed by Tenant (or employee of Tenant) or, a professionally qualified licensed engineer (Landlord may, at its sole discretion, not accept a PIR performed by a third-party who is not a licensed engineer). It is the intent herein for Tenant to establish and perform routine inspections of the Land Improvements to ensure each element or feature is thoroughly inspected, potential problem areas identified, and proper corrective measures are recommended and implemented by Tenant:
 - 1. The PIR shall be cumulative over the Term evidencing each condition found and reported, the recommended remedy, the maintenance action taken and when, and the estimated cost of said remedy. Thereafter, Tenant shall update the PIR every five years (within sixty-days thereof) and deliver same to Landlord for its records.
 - If deferred pavement maintenance is identified (or any other substandard condition)
 and reported, Landlord may make written demand for Tenant to remedy the reported
 deferred condition. Should Tenant fail to timely remedy the condition set forth in

Landlord's demand notice, Landlord reserves the right but not the obligation to (i) make the repairs itself and invoice Tenant for the cost of the repairs or, (ii) give notice to Tenant of its default of this Lease; pursuant to Section 23 – Default By Tenant.

- Tenant's failure to timely deliver the PIR to Landlord as required herein shall constitute a default under <u>Section 23</u> of this Agreement if not cured within the cure periods set forth herein.
- 4. Notwithstanding the foregoing, over the Term Landlord reserves the right to conduct its own PIR performed by a professionally qualified licensed engineer who is not an employee of the Landlord and is not compensated on a contingent fee or percentage basis. If deferred pavement maintenance or other substandard conditions are identified and reported in Landlord's PIR, Landlord may elect to provide Tenant a copy of the PIR and make written demand for (i) Tenant to remedy the reported conditions within a commercially reasonable period of time but in no event greater than six (6) months of Tenant's receipt of said notice, and (ii) reimburse Landlord for its out-of-pocket costs for the PIR (provided, that Tenant shall not be required to make such reimbursement more than one time in any 24 month period or if Tenant has provided a PIR to Landlord within the 24 month period prior to Landlord's PIR). Tenant's failure to remedy the reported conditions as required and or reimburse Landlord for its out-of-pocket costs are defaults of the Ground Lease pursuant to Section 23 of this Agreement if not cured within the cure periods set forth therein.

For the purposes of this Section 11, the term "deferred pavement maintenance" means physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property.

Section 12. Alterations, Additions, and Improvements:

After completion of the New Land Improvements described in <u>Section 6</u>, Tenant shall not make any alterations, additions, modifications, or improvements to the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a good and workmanlike manner, shall comply with all the standards and requirements set out above, and in <u>Section 6</u> (including applicable indemnity obligations) and <u>Section 8</u>, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in <u>Section 6</u>).

Section 13. Insurance and Bonds:

- A. At all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:
 - 1. If applicable, insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism, and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be affected.
 - 2. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000.00 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000.00 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
 - 3. Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.
 - 4. If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding, or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.
 - 5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
 - Hangarkeepers' Legal Liability insurance, at limits of \$1,000,000.00 peroccurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft

belonging to a third-party on the Demised Premises, or if Tenant is otherwise involved in any operation on the Demised Premises in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

- 7. Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000.00 and medical expense coverage with a limit of \$5,000.00 for any one person.
- 8. Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000.00 for bodily injury and property damage.
- 9. If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by the City, Tenant shall maintain a minimum of \$1,000,000.00 in Pollution Liability Insurance coverage, which may be satisfied through sudden and accidental pollution coverage under Tenant's commercial general liability policy.
- 10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.
- B. Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:
 - The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees, and agents shall be named as additional insureds or loss payees except with respect to the professional liability policies and workers compensation insurance; and
 - All insurance policies which name the Town of Addison, Texas, and the Airport
 Manager (and their respective past and present officials, officers, employees, and agents)
 as additional insureds must be endorsed to read as primary coverage and non-contributory
 regardless of the application of other insurance; and
 - A waiver of subrogation in favor of the Town of Addison, Texas, and the Airport Manager (and their respective past and present officials, officers, employees, and agents) shall be contained in each policy required herein; and
 - All insurance policies shall be endorsed to the effect that the Town of Addison,
 Texas, and the Airport Manager will receive at least thirty (30) days written notice prior to

cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.); and

- All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages; and
- All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager; and
- Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and
- 8. Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.
- C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:
 - 1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and
 - 2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.
- D. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

Section 14. Casualty Damage or Destruction:

- A. In case of any damage to or destruction of the Land Improvements or any other improvements on or at the Demised Premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.
- B. In case of any damage to or destruction of any improvements (including the Land Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure,

equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that Landlord's approval shall not be required in connection with Restoration pursuant to plans previously approved by Landlord. All such design and construction shall comply with other sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6, 8, and 13 hereof.

- C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with Sections 6 and 21 hereof and other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority, and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.
- **D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ("Net Insurance Proceeds")) shall be applied as follows:
 - 1. Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel, title commitment or similar report acceptable to Landlord confirming that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
 - 2. Upon receipt by Landlord of the certificate and opinion of counsel, title commitment or report required by the foregoing clauses (i) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.
- E. Subject to extension for delays caused by Force Majeure, in the event Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, and Tenant does not commence to cure such failure within the period

set forth below, such failure by Tenant shall be an Event of Default by Tenant pursuant to notice and cure in Section 23.B of this Lease. If an Event of Default by Tenant occurs pursuant to the preceding sentence and is continuing, Landlord shall have the right, but not the obligation, to commence or complete Restoration as described hereinafter. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

F. In the event of termination of this Lease by Landlord because of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the Term of this Lease. All insurance proceeds, if any are remaining and/or available subject to another secured interest on the property, shall be paid to the Landlord.

Section 15. Condemnation:

- A. If during the Term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, as determined by Tenant, Tenant shall be entitled to terminate this Lease as of the date that said condemning authority takes possession of the Demised 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 Demised Premises is susceptible to efficient and economic occupation and operation by Tenant, as determined 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 payment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The Rental adjustment called for herein shall not commence until said condemning authority takes possession of the condemned portion of the Demised Premises.
- C. If this Lease is not terminated pursuant to <u>Section 15.A.</u>, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and

Tenant, as their interest may appear. If this Lease is terminated pursuant to <u>Section 15.A</u>, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

Section 16. Utilities:

Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the Term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities:

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 Demised Premises, other Airport installations, and all other reasonable services which may be provided with or without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall always be under the exclusive control, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

Section 18. Rules and Regulations:

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

Section 19. Signs and Equipment:

After first securing Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and

other equipment and facilities in or on the Demised 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, and regulations, including the City 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).

Section 20. Landlord's Right of Entry:

Landlord and Landlord's authorized representatives shall have the right, during normal business hours, and upon no less than 48 hours' prior written notice (except in the case of emergency threatening life, safety or property) to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose. No such entry by Landlord shall unreasonably interfere with the conduct of Tenant's operations at the Demised Premises.

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 Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity and Exculpation:

A. Exculpation.

Except and to the extent caused by the gross negligence or intentional misconduct of Landlord or any party acting on its behalf, 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 its elected officials, officers, employees, agents, representatives, and volunteers of the **Town of Addison**, **Texas**, individually or collectively, in both their official and private capacities (the **Town of Addison**, **Texas**, and the elected officials, the officers, employees, representatives, and volunteers of the **Town of Addison**, Texas each being an "Addison Person" and collectively the "Addison Persons") and (ii) Airport

Manager and Airport Manager's owners, officers, employees and agents (Airport Manager and Airport Manager's owners, officers, employees and agents each being a "Manager Person" and collectively the "Manager Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the DEMISED Premises, whether directly or indirectly, (collectively for purposes of this subparagraph B, "Damages"), that result from, relate to, or arise out of, in whole or in part, from:

- 1. any condition of the DEMISED PREMISES caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, officers, managers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires, or any other person acting by or under the authority or with the permission of Tenant, Tenant's tenants, or any other person entering the Premises under express or implied invitation of Tenant during the Term (collectively, "Tenant Persons"); and
- 2. any construction on or repair to the DEMISED Premises, or the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling; and
- 3. representations or warranties by Tenant under this Lease; and/or
- 4. 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 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; PROVIDED THAT UNDER NO CIRCUMSTANCE SHALL THE SAME APPLY TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE LANDLORD OR ANY PARTY ACTING ON ITS BEHALF.

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.

C. 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 Section 21) and Airport Manager and all other Manager Persons (as the term "Manager Persons" is defined in subparagraph B. of this Section 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 Section 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 Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) any loss or damage that may result from or 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, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

C. The provisions of this <u>Section 21</u> shall survive the expiration or termination of this Lease.

Section 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 directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised 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 (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws:

Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws"); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date or that are caused by any party other than Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant (the "Tenant Party(ies)"). In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws, to the extent provided in the preceding sentence. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under any Tenant Party during the Term of this Lease, Tenant shall, at Tenant's own 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 Demised Premises and/or any portion of the Common Facilities and shall sign the affidavits promptly when requested to do so by Landlord.

TENANT'S FURTHER INDEMNITY OBLIGATION. Tenant shall indemnify, defend, save and hold harmless Landlord and all other Landlord persons, and airport manager and all other manager persons, from and against, and reimburse Landlord and all other Landlord persons, and airport manager and all other manager persons, for, any and all obligations, damages, injunctions, fines, penalties, demands, claims, costs, fees, charges, expenses, actions, causes of action, judgments, liabilities, suits, proceedings and losses of whatever kind or nature (including, without limitation, attorneys' fees and court costs), and all cleanup or removal costs (collectively for purposes of this subsection, "damages") and all actions of any kind arising out of or in any way connected with the following, to the extent caused by Tenant or any Tenant Party, (i) the generation, installation, storage, use, treatment, transporting, disposal or discharge of hazardous materials in or on the demised premises and/or any portion of the airport, including the common facilities, or any property adjacent to the airport, by Tenant or any Tenant Party, and (ii) all fines. suits, procedures, claims and actions of any kind arising out of Tenant's failure to provide all information, make all submissions and take all steps required by the authority under the cleanup laws or any other environmental law, rule, standard, regulation, or policy. 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 [but not the gross negligence or willful misconduct] of the Landlord, any other Landlord person, airport manager, or any other manager person, or by any act or omission of Landlord, any other Landlord person, airport manager, or any other manager person that may give rise to strict liability of any kind. However, to the extent gross negligence and/or willful misconduct are alleged simultaneously with claims requiring defense and indemnity herein, Tenant shall defend all claims alleged against the Landlord, and any other Landlord person, and airport manager, and any other manager person. Tenant's liability under this indemnity obligation shall be reduced by that portion of the total amount of the damages (excluding defense fees and costs) equal to the indemnified person's or indemnified persons' 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 indemnified person's or indemnified persons' defense costs and attorneys' fees shall be reduced by a portion of the defense costs and attorneys fees equal to the indemnified person's or indemnified persons' proportionate share of the negligence or conduct that would give rise to strict liability of any kind, that caused the loss. 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 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. Environmental Site Assessments:

Prior to the Commencement Date of this Lease, the Tenant, at Tenant's sole cost and expense, shall be entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If the Phase I ESA indicates the likely presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled, as its sole remedy, to disaffirm this Lease, in which case this Lease shall become null and void and no further obligation shall be borne by either party hereto. A copy of a Phase I ESA and Phase II ESA, if any, shall be delivered promptly to Landlord upon completion.

Section 23. Default by Tenant:

Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an "Event of Default" (herein so called) by Tenant under this Lease:

- A. Failure of Tenant to make any payment of Rent payable to Landlord 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 (the "10-day Grace Period") and such failure shall not be cured within ten (10) days after written notice thereof (the "Cure Period") to Tenant (which Cure Period may overlap, in whole or in part, the 10 day Grace Period).
- B. Failure to pay or cause to be paid Taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is obligated to pay under the Lease and such failure shall continue for a period of thirty (30) days after written notice thereof to Tenant.
- C. Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of Rent, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A and B of this Section 23) and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant setting forth such default; provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then Tenant shall advise Landlord in writing of the same, such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty (60) days except in the case of Force Majeure, in which event the Force Majeure provisions shall apply) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and has commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

- D. Insolvency or the making of a transfer in fraud of creditors as determined by a court of law with jurisdiction over Tenant, or the making of a general assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.
- E. Filing of a petition under any section or chapter of the Bankruptcy Code, 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 that is not dismissed within ninety (90) days.
- F. Appointment of a receiver or trustee for all or substantially all the assets of Tenant or any guarantor of Tenant's obligations.
- G. Abandonment or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of ninety (90) consecutive days.
- H. Tenant is in default of any other lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

Section 24. Remedies of Landlord:

Upon the occurrence and during the continuance of any uncured Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:

- A. Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant. Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in subsection B. of this Section.
- B. Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.
 - C. Recover unpaid Rent and any Damages (as defined below);
- D. Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.

- E. Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.
- F. Sue for eviction, specific enforcement, equitable relief, Rent, damages, or any other available remedy.
- G. INTENTIONALLY DELETED (reserved for the Application of a Security Deposit, if any).
- H. Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.
- Withhold or suspend any payment that this Lease would otherwise require Landlord to make.
- J. Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).

For purposes of this Section, "<u>Damages</u>" includes, without limitation, all actual, incidental, and or consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises, including, without limitation, the costs of brokerage commissions and cleaning, make-ready, or repairing the Demised Premises for a substitute tenant or tenants, (D) collecting any money owed by Tenant or a substitute tenant, I repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or 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.

Section 25. Default by Landlord:

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential 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 recovery or entitle Tenant to take any action whatsoever with regard to the Demised Premises or Landlord until (a) 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 or (b) in case the case of any default by Landlord hereunder which prevents Tenant from accessing or utilizing the Demised Premises (or any material part thereof) for its intended purpose for a period of 24 hours after Tenant has provided notice to Landlord of the same (excepting, however, to the extent the same is caused by an emergency threatening life, safety or property but only to the extent Landlord is continuously using commercially reasonable efforts to remedy the same). Should Landlord fail to cure such default within said cure period, or within said additional reasonable period, Tenant shall have the right as its sole and exclusive remedy to:

- A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding Rental payment(s) due by Tenant to Landlord hereunder;
- B. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and sue Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or
 - D. Terminate this Lease upon written notice of the same to Landlord.

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.

Section 26. Mitigation of Damages:

A. In conjunction with any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than ninety (90) days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24).

Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:

- Landlord will have no obligation to solicit or entertain negotiations with any other
 prospective tenants of the Demised Premises until and unless Landlord obtains full and
 complete possession of the Demised Premises, including without limitation, the final and
 unappealable legal right to relet the Demised Premises free of any claim of Tenant.
- Landlord will not be obligated to offer the Demised Premises to a prospective tenant
 when other premises suitable for that prospective tenant's use are (or soon will be) available
 in any other premises located at Addison Airport.
- 3. Landlord will not have any obligation to lease the Demised Premises for any amount of rent less than the current market rent for similar space at Addison Airport (or if no similar space is available, the current fair market rent prevailing for similar space in comparable properties in the same market area as the Demised Premises) nor shall Landlord be obligated to enter a new lease under any terms or conditions that are unacceptable to Landlord.
- Landlord will not be obligated to enter any lease with any prospective tenant whose
 reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment
 and opinion.
- 5. Landlord will not be obligated to enter a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first-class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.
- Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant,

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and TENANT HEREBY WAIVES AND RELEASES, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No Rent collected from a substitute tenant for any month more than the Rent due under the Lease for that month will be credited or offset against unpaid Rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. To the fullest extent permitted by LAW, Tenant waives any

OTHER OBLIGATION BY LANDLORD TO MITIGATE ITS DAMAGES AFTER TENANT FAILS TO PAY RENT OR VACATES OR ABANDONS THE PREMISES.

B. Tenant's right to seek actual damages because of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. 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 Demised Premises, which loss or damage is covered by valid and collectible casualty, 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.

Section 28. Title to Improvements:

- A. Any and all real property improvements made on or to the Demised Premises, including, without limitation, the Existing Land Improvements, New Land Improvements (subject to their Final Completion and acceptance by Landlord as provided for in Addendum #1), shall be owned and title by Landlord.
- B. Upon the termination of this Agreement, whether by expiration of the Term hereof or by reason of default on the part of Tenant, or for any other reason whatsoever (i) Tenant shall deliver up to Landlord the Demised Premises clean and free of trash and debris, in a broom swept condition, in good repair and condition in accordance to Section 11 herein, as amended or modified, with all fixtures, if any, situated on the Demised Premises delivered in good working order, reasonable wear and tear excepted, and (ii) unless Tenant is in default at the time, Tenant shall have the right to remove all personal property (including aircraft stored on the Demised Premises) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises, including any Land Improvements, caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense.
- C. Upon such termination, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the expiration or termination of this Agreement and giving the effective date of said termination or expiration date or Extended Term Expiration Date.

D. Upon the expiration or early termination of this Lease, Tenant shall, at Landlord's request, execute a recordable instrument evidencing the termination of this Agreement and giving the effective date of said termination or expiration date.

Section 29. Mechanics' and Materialmen's Liens; Lien for Rent; Waiver of Landlord Liens:

Tenant agrees to defend, indemnify and hold harmless to the full extent as provided in this Lease, THE INDEMNIFIED Persons from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 39 as additional Rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises unless a shorter period of time is dictated by applicable law.

Section 30. Intentionally Deleted.

Section 31. Quiet Enjoyment and Subordination:

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants, and agreements herein contained, shall (subject to all the terms and conditions of this Lease) peaceably and quietly have, hold, and enjoy the Demised Premises during the full Term of this Lease. 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 hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express condition that the lienholder executes a commercially reasonable subordination non-disturbance attornment ("SNDA") in which it is acknowledged 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 on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect as a direct lease between Tenant and the mortgagee or purchaser at foreclosure. 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 the foreclosure of such mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis:

The Rent provided for in this Lease shall be a net return to Landlord for the Term of this Lease, free of any loss, expenses, or charges with respect to the Demised Premises, including, without

limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over:

Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised 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 twenty-five percent (125%) of the Base Rent paid for the last month of the Term of this Lease.

Section 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. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 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 Demised 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 Demised Premises.

Section 36. Attorneys' Fees:

If, on account of any breach or default by either Party to this Lease, it shall become necessary for either Party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

Section 37. Intentionally Removed.

Section 38. Estoppel Certificates:

Landlord and Tenant agree that from time to time, upon not less than ten (10) business days' prior written request by the other, it will deliver to the other an estoppel certificate stating:

- That this Ground Lease is in full force and effect and is unmodified except as set forth in said estoppel certificate.
- A true and correct and complete copy of the Lease with all amendments, assignments and modifications to the Lease are attached thereto (if so requested).
- There are no other agreements except as stated therein between Landlord and Tenant concerning the Demised Premises or otherwise affecting the Lease.
- Affirming the Commencement Date and scheduled Expiration Date, unless earlier terminated.
- The amount and status of the Rent and other amounts due under this Ground Lease as of the date of certification.
- Whether this Ground Lease has been modified or amended and, if so, describing with specificity the modifications or amendments.
- Schedule of all subleases then in effect and a true and correct copy of each sublease, if so requested.
- 8. Any Mortgage in effect encumbering the Demised Premises
- 9. That to the party's current knowledge, there is no default or breach of this Ground Lease or any matter exists that, with the passage of time, will result in a default or breach, and describing with specificity the nature of the default or breach.
- 10. Amount of any Security Deposit, Tenant has on account with Landlord, if any.
- 11. Tenant has not paid rent more than one (1) year in advance.

Section 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 at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) 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 cash, 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. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

Section 40. 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"), and Tenant agrees and consents to the same. 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 Demised 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 limit or obstruct access to the Demised Premises and/or to the Airport; (ii) releases, waives and discharges Landlord and Manager, and Landlord Persons and Manager Persons, 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 Demised 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 any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section 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 Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Independent Contractor:

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

Section 42. Force Majeure:

Neither party shall be deemed in default of this Agreement for any delay or failure to perform any obligation hereunder (other than a payment obligation) so long as and to the extent to which any delay or failure in the performance of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event (defined below); provided that the party prevented or delayed in performing an obligation under this Agreement due to a Force Majeure Event shall notify the other party (to be confirmed in writing within seventy-two (72) hours of the inception of the delay) of the occurrence of a Force Majeure Event and shall describe, in reasonable detail, the circumstances constituting the Force Majeure Event and the obligation and/or performance thereby delayed or prevented. The party claiming that a Force Majeure Event has occurred shall continue to use commercially reasonable efforts to mitigate the impact or consequence of the event on the other party and to recommence performance whenever and to whatever extent possible without unreasonable delay. The party affected by the event shall provide the other party with daily updates (and more frequent updates if requested) as to the status of its efforts to recommence performance and written notice upon conclusion of the Force Majeure Event. A Force Majeure Event occurs when either party is unable, other than as may arise from its own negligence or willful misconduct, to perform its

obligations under the terms of this Agreement (excluding Tenant's timely payment of Rent or any other payment obligation to Landlord hereunder) because of acts of God, military war, invasion, insurrection, riot, strike, lockout, inability to obtain labor or materials or reasonable substitutes therefore, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises (only in such cases and solely to the extent that the party's performance is frustrated as a direct result of the same), or other cause reasonably beyond its control, whether foreseen or unforeseen, or anticipated or otherwise.

Section 43. 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.

Section 44. 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. The terms "day", "week,", "month", "year" or any plural form of said terms shall be construed to mean on a calendar basis unless expressly stated otherwise.

Section 45. Captions:

The captions or headings, sections, 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.

Section 46. Successors; No Third-Party Beneficiaries; No Waiver of Immunity; No Tax Representation:

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.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability:

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give full effect (to the extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the Term of this Lease does not exceed 40 years (480 months); if it should be determined that the Term of this Lease exceeds such period, the Term hereof shall be reformed to make the Term hereof not exceed such period.

Section 48. Notices:

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001 Email: wpierson@addisontx.gov

Town of Addison, Texas c/o Assistant Director – Real Estate 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Email: bill.dyer@addisonairport.net

TO TENANT:

Scarborough Airport I, LP 16380 Addison Road Addison, Texas 75001 Attn: Mr. James R. Feagin Email: jfeagin@landmarkinterests.com

Section 49. 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.

Section 50. 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. This Lease may be executed and delivered by electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

Section 51. Consent; "Includes" and "Including"; Recitals:

Where Landlord's consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

Section 52. Governing Law and Venue:

This Lease and all the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choose of laws rules of any jurisdiction. All suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

Section 53. Survivability of Rights and Remedies:

Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the Term hereof shall survive the cancellation, expiration or termination of this Lease. Notwithstanding anything to the contrary, the Parties obligations and liabilities of the Parties pursuant Sections 6, 21, 22, 28 shall survive the expiration or earlier termination of this Lease as deemed necessary for the enforcement of the Parties rights and obligations thereunder.

Section 54. Entire Agreement and Amendments; Authorized Persons:

This Lease, consisting of fifty-four (54) Sections and Exhibits 1, 2, 3, 4 and 5 attached hereto, together with Ground Lease Addendum #1 and Ground Lease Addendum #2 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.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

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

TEN.	ANT:	LANDLORD:
	RBOROUGH AIRPORT I, LP, sas limited partnership	TOWN OF ADDISON, TEXAS
Ву:	Scarborough I Airport GP, LLC, a Texas limited liability company, its general partner	Wesley S. Pierson, City Manager

James R. Feagin, Manager

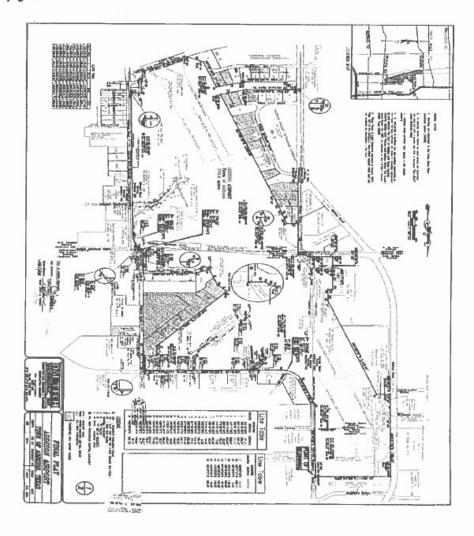
ACKNOWLEDGEMENTS

STATE OF TEXAS S COUNTY OF DALLAS This instrument was acknowledged before me on
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2151 day of , 2022. Bruce Damon Browne My Commission Expires 1/17/2026 Notary ID 124024648 Notary Public, State of Texas
STATE OF TEXAS \$ COUNTY OF DALLAS This instrument was acknowledged before me on, 2022 by Wesley S. Pierson, City Manager of the Town of Addison, Texas, a Texas home-rule municipality, on behalf of the said municipality. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the day of, 2022.
Irma G. Parker Notary Public, State of Texas Comm. Expires 08-07-2022 Notary ID 4770064 Notary Public, State of Texas
41 0550-2804

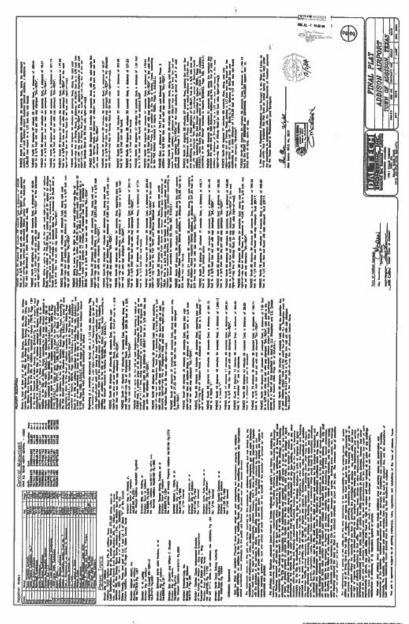
Town of Addison, Texas Resolution No.

Exhibit 1 - Legal Description of Addison Airport

The property platted pursuant to the Final Plat, Addison Airport, recorded as Instrument #200503420292 in Dallas County, Texas Official Public Records as depicted on the following two pages.



Scarborough Airport I, LP Ground Lease Exhibit I



Scarborough Airport I, LP Ground Lease Exhibit 1

Page 2

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Exhibit 2 - Demised Premises Property Survey

Scarborough Airport I, LP Ground Lease Exhibit 2

Page 1

Lease Tract No. 1 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T.

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being all of that called Lease Tract No. 1, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said tract being more particularly described, as follows:

BEGINNING at an "X" cut in concrete found (Grid Coordinate: Northing=7,041,461.90', Easting=2,480,265.52) for the southeasterly corner Lease Tract 1, same being an angle point of said ADDISION AIRPORT, said corner also being the most northerly northwest corner of the VAN-HOFF SUBDIVISION, an addition to the Town of Addison, as recorded in Volume 79122, Page 1831, M.R.D.C.T., said corner also being the most westerly southwest corner of;

THENCE North 68°50'41" West, over and across said ADDISION AIRPORT, same being the southerly line of said Lease Tract No. 1, a distance of 161.58' to a 1/2" iron rod found for the southwesterly corner of said Least Tract 1;

THENCE North 00°34'31" West, along the westerly line of said Lease Tract No. 1, same being over and across said ADDISION AIRPORT, a distance of 117.57 to a p.k. nail found for the northwesterly corner of said Lease Tract No. 1, same being in the southerly line of Lease Tract No. 2, as shown on said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 89°25'29" East, along the common line between said Lease Tract No. 1 and Lease Tract No. 2, a distance of 150.13' to a p.k. nail found for the northeasterly corner of said Lease Tract No. 1, same being the southeasterly corner of Lease Tract No. 2, said corner being in the westerly line of said BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), said corner also being in an easterly line of said ADDISION AIRPORT;

THENCE South 00°33'53" East, along the common line between Lease Tract No. 1 and BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 177.39' to the POINT OF BEGINNING and containing 22,139 square feet or 0.508 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 2

Lease Tract No. 4 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being a part of that called Lease Tract No. 3, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., and being all of that called 0.041 acre tract, described in deed to the City of Addison, Texas, as recorded in Volume 84214, Page 773, of the Deed Records, Dallas County, Texas (D.R.D.C.T.), said tract being more particularly described, as follows:

BEGINNING at a 1/2" iron rod found with red plastic cap stamped "DAL-TEC" found (Gird Coordinate: Northing=7,041,666.08, Easting=2,480,463.33") for the southeasterly corner of said Lease Tract No. 3, same being the southeasterly corner of said 0.041 acre tract, said corner also being the northeasterly corner of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said corner also being in the westerly monumented line of Addison Road;

THENCE South 89°26'29" West, along the southerly line of said 0.041 acre tract, same being the southerly line of said Lease Tract No. 3, said corner also being the northerly line of BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 199.80' to a p.k. nail found for the southwesterly corner of said 0.041 acre tract, same being the southwesterly corner of said Lease Tract No. 3, said corner also being in the easterly line of Lease Tract No. 2, of said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 00°37'52" West, along the westerly line of said 0.041 acre tract and said Lease Tract No. 3, same being the easterly line of said Lease Tract No. 2, a distance of 9.00' to a p.k. nail found for the northwesterly corner of said 0.041 acre tract;

THENCE North 89°26'29" East, along the northerly line of said 0.041 acre tract, same being over and across said Lease Tract No. 3, a distance of 199.81' to an "X" cut found for the northeasterly corner of said 0.041 acre tract, same being in the easterly line of said Lease Tract No. 3, same being in the westerly monumented line of Addison Road:

THENCE South 00°34'00" East, along the westerly monumented line of said Addition Road, same being the easterly line of said 0.041 acre tract and said Lease Tract No. 3, a distance of 9.00' to the POINT OF BEGINNING and containing 1,798 square feet or 0.041 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit2

Exhibit 3 - Memorandum of Lease Form

AFTER RECORDING RETURN TO: Addison Airport Management c/o Real Estate Manager 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001

MEMORANDUM OF LEASE			
This Memorandum of Lease is dated theday of, 20, and is executed by and between the Town of Addison, Texas, a home-rule municipality ("Landlord"), and, a(state)(entity) type)			
WHEREAS, the City is the record title owner of the Addison Airport, a description of which			
WHEREAS, Landlord and Tenant first enter into that certain Ground Lease Agreement made effective (" <u>Effective Date</u> ") dated wherein the City leases to Tenant and Tenant leases from the City (" <u>Ground Lease</u> "), a certain portion of the Airport described hereinafter as:			
Two parcels of land totaling .549-acres (23,937 square feet) described as Lease Tract No.1, being a certain .508-acre (22,139 square feet) parcel of land, and Lease Tract No. 4, a detached .041-acre (1,798 square feet) parcel of land, both of which are located within Addison Airport and more particularly described respectively in the Boundary Survey prepared by North Texas Surveying, L.L.C.; Job No. 2022-0058 dated May 26, 2022 ("Property Survey") shown in Exhibit A attached hereto and incorporated herein by reference (the "Demised Premises"), together with the non-exclusive right to use the Common Facilities as defined in Section 17.			
WHEREAS, pursuant to the Ground Lease, provided Tenant (i) is not in default of the Ground Lease or any other agreement with Landlord beyond the expiration of applicable notice and cure periods, and (ii) achieves Final Completion of the New Land Improvements as defined in <u>Ground Lease Addendum #1</u> of the Ground Lease on or before the Expiration Date, the Base Term shall be extended so that this Lease will end to the last day of the four-hundredth and eightieth (480 ^{the}) full calendar month following the Commencement Date ("Extended Term Period"); and			
Scarborough Airport I, LP Ground Lease Exhibit 3 Page 1			

Town of Addison, Texas Resolution No.

WHEREAS, no default by Tenant successfully achieved Final Completion of Ground Lease and is therefore eligible for	exists under the Ground Lease and Tenant has the New Land Improvements as required by the the Extended Term Period.
	und Lease Base Term is hereby extended to now nendments or modifications were made to the
be construed to alter, modify, expand, dimir Lease, as amended and/or modified. In the e of this Memorandum of Lease and the prov	y for recording and notice purposes and shall not nish, or supplement the provisions of the Ground vent of any inconsistency between the provisions visions of the Ground Lease, as amended and/or se shall govern, including all rights and duties of
Upon the expiration or earlier termin agree that they shall execute and record a M for recording and notice purposes.	nation of the Ground Lease, Landlord and Tenant Memorandum of Ground Lease Expiration solely
IN WITNESS WHEREOF, the un	ndersigned parties execute this Memorandum of
Lease this day of	, 202
SCARBOROUGH AIRPORT I, LP, a Texas limited partnership By: Scarborough I Airport GP, LLC, a limited liability company, its ge partner By: James R. Feagin, Markager	LANDLORD: TOWN OF ADDISON, TEXAS Texas eneral By: Wesley S. Pierson, City Manager
Scarborough Airport I, LP	
Ground Lease Exhibit 3	Page 2

ACKNOWLEDGEMENT

STATE OF TEXAS § COUNTY OF DALLAS §	
This instrument was acknown James R. Feagin, Manager of Sca	wledged before me on June 21, 2022, by arborough I Airport GP, LLC, a Texas limited liability borough Airport I, LP, a Texas Limited Partnership, on
, 2022.	Damon Browne ommission Expiree 1/17/2020 Notary Public, State of Texas
STATE OF TEXAS § COUNTY OF DALLAS §	
municipality, known to me to be instrument, and acknowledged to consideration therein stated	rsigned authority, on this day personally appeared city manager of the Town of Addison, a home-rule the person whose name is subscribed to the foregoing me that he executed the same for the purposes and hand and seal of office this day of
[SEAL]	By: Notary Public, State of Texas My commission expires:
Scarborough Airport I, LP Ground Lease Exhibit 3	Page 3

Town of Addison, Texas Resolution No. ____

Exhibit A

Lease Tract No. 1 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T.

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being all of that called Lease Tract No. 1, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said tract being more particularly described, as follows:

BEGINNING at an "X" cut in concrete found (Grid Coordinate: Northing=7,041,461.90', Easting=2,480,265.52) for the southeasterly corner Lease Tract 1, same being an angle point of said ADDISION AIRPORT, said corner also being the most northerly northwest corner of the VAN-HOFF SUBDIVISION, an addition to the Town of Addison, as recorded in Volume 79122, Page 1831, M.R.D.C.T., said corner also being the most westerly southwest corner of;

THENCE North 68°50'41" West, over and across said ADDISION AIRPORT, same being the southerly line of said Lease Tract No. 1, a distance of 161.58' to a 1/2" iron rod found for the southwesterly corner of said Least Tract 1:

THENCE North 00°34'31" West, along the westerly line of said Lease Tract No. 1, same being over and across said ADDISION AIRPORT, a distance of 117.57' to a p.k. nail found for the northwesterly corner of said Lease Tract No. 1, same being in the southerly line of Lease Tract No. 2, as shown on said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 89°25'29" East, along the common line between said Lease Tract No. 1 and Lease Tract No. 2, a distance of 150.13' to a p.k. nail found for the northeasterly corner of said Lease Tract No. 1, same being the southeasterly corner of Lease Tract No. 2, said corner being in the westerly line of said BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), said corner also being in an easterly line of said ADDISION AIRPORT;

THENCE South 00°33'53" East, along the common line between Lease Tract No. I and BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 177.39' to the POINT OF BEGINNING and containing 22,139 square feet or 0.508 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 3

Lease Tract No. 4 City of Addison, Texas Vol.74214, Pg. 773 D.R.D.C.T

Being a tract of land, situated in the William Lomax Survey, Abstract No. 792, in the Town of Addison, Dallas County, Texas, and being a part of that called Lease Tract No. 3, as shown on the plat of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 84088, Page 4359, of the Map Records, Dallas County, Texas (M.R.D.C.T.), and also being a part of the ADDISON AIRPORT, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., and being all of that called 0.041 acre tract, described in deed to the City of Addison, Texas, as recorded in Volume 84214, Page 773, of the Deed Records, Dallas County, Texas (D.R.D.C.T.), said tract being more particularly described, as follows:

BEGINNING at a 1/2" iron rod found with red plastic cap stamped "DAL-TEC" found (Gird Coordinate: Northing=7,041,666.08, Easting=2,480,463.33') for the southeasterly corner of said Lease Tract No. 3, same being the southeasterly corner of said 0.041 acre tract, said corner also being the northeasterly corner of BLAKELY AIRPORT ADDITION, an addition to the Town of Addison, as recorded in Volume 85100, Page 4042, M.R.D.C.T., said corner also being in the westerly monumented line of Addison Road;

THENCE South 89°26'29" West, along the southerly line of said 0.041 acre tract, same being the southerly line of said Lease Tract No. 3, said corner also being the northerly line of BLAKELY AIRPORT ADDITION (Vol. 85100, Pg. 4042), a distance of 199.80' to a p.k. nail found for the southwesterly corner of said 0.041 acre tract, same being the southwesterly corner of said Lease Tract No. 3, said corner also being in the easterly line of Lease Tract No. 2, of said BLAKELY AIRPORT ADDITION (Vol. 84088, Pg. 4359);

THENCE North 00°37'52" West, along the westerly line of said 0.041 acre tract and said Lease Tract No. 3, same being the easterly line of said Lease Tract No. 2, a distance of 9.00' to a p.k. nail found for the northwesterly corner of said 0.041 acre tract;

THENCE North 89°26'29" East, along the northerly line of said 0.041 acre tract, same being over and across said Lease Tract No. 3, a distance of 199.81' to an "X" cut found for the northeasterly corner of said 0.041 acre tract, same being in the easterly line of said Lease Tract No. 3, same being in the westerly monumented line of Addison Road;

THENCE South 00°34'00" East, along the westerly monumented line of said Addition Road, same being the easterly line of said 0.041 acre tract and said Lease Tract No. 3, a distance of 9.00' to the POINT OF BEGINNING and containing 1,798 square feet or 0.041 acres of land, more or less.

Scarborough Airport I, LP Ground Lease Exhibit 3

Exhibit 4 - Pavement Inspection Report (PIR) Template

PAVEMENT INSPECTION REPORT

This form represents a sample format for recording inspection and maintenance data. Any form is acceptable provided the inspection data and maintenance information can easily be retrieved and assigned to the correct pavement element. Other variations may include dating each distress and keeping a running sheet rather than using a new sheet for each inspection. Although not necessary, a properly constructed electronic spreadsheet or database will allow quick reference and summary of this data.

Dated Inspected	Cost			
	Date Performed			
Inspected By:	Maintenance Action / Description of Repair			
Pavement Element:	Inspection Record Distress, description, Dimensions, Severity, Features Recommended Action			
	Location (see map or aerial)			

rl, LP	bit 4
Airpo	e Exhi
orough	nd Leas
Scarp	Groun

EXHIBIT 5

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement (the "<u>Agreement</u>") is entered into as of the Effective Date by and between the **Town of Addison**, **Texas**, a Texas home-rule municipality (the "<u>City</u>") and **Scarborough I Airport**, **LP**, a Texas limited partnership (the "<u>Company</u>") (each a "party" and collectively the "parties").

RECITALS:

WHEREAS, City is the owner of the Addison Airport located within the City; and

WHEREAS, the Company desires to enter into (or has entered into) a ground lease for the Ground Lease Property (defined herein) with City as landlord and Company as tenant (the "Ground Lease"); and

WHEREAS, in connection with the Ground Lease, Company (as tenant) intends to re-construct and/or repair the existing aircraft apron within the Ground Lease Property (the "Site Improvements"); and

WHEREAS, the existing aircraft apron on the Ground Lease Property abuts the Aiport's Taxilane Uniform Common Area, which is owned by the City and serves as a public aeronautical access easement for the Ground Lease Property and the general aviation public; and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction of improvements related to the development of public facilities within the City; and

WHEREAS, City has determined that it would serve the best interest of the general aviation public to have the aircraft apron within the Taxilane Uniform Common Area reconstructed by Company's Contractor in conjunction with Site Improvements to the Ground Lease Property (the "Taxiway Improvements"); and

WHEREAS, City and Company desire to enter into this Agreement to set forth the parties rights and obligations with respect to the foreogoing Improvements, including City's participation in the Project costs in conformance with Section 212.071 of the Texas Local Government.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Company do hereby agree as follows:

Article I Term

The term of this Agreement shall commence as of the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall be defined as follows:

"Airport" shall mean the Addison Airport.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

"Applicable Laws" shall mean all laws, ordinances, standards, codes, statutes, rules and regulations of the United States, the State of Texas (including without limitation the Federal Aviation Administration and Texas Department of Tranportation and any and all grant agreements or assurances with same), the City (including the Airport's adopted Rules and Regulations), and any other governmental entity having jurisdiction over the subject matter of this Agreement, including all work or services to be performed in connection with the Project (including, without limitation, the standards of the Americans with Disabilities Act of 1990).

"Commencement of Construction" shall mean that (i) the Design Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the Design Plans have been issued by all applicable governmental authorities, and (iii) site preparation necessary for the construction of Improvements, as applicable, has commenced.

"Completion of Construction" shall mean: (i) the Project has been substantially completed in accordance with the Design Plans; and (ii) the Improvements have been accepted by the City in writing.

"Design Plans" shall mean the plans and specifications for the construction of the Improvements, inclusive of any change orders thereto, prepared in compliance with this Agreement by a professional architect or engineer authorized to practice in the State of Texas, which have been approved by the City.

"Effective Date" shall mean the date this Agreement has been signed by authorized representatives of City and Company.

"Force Majeure" shall have the meaning ascribed to it in Article V of this Agreement.

"Ground Lease Property" shall mean that certain tract of land located within the Airport consisting of approximately .508 acres (22,124 gross square feet) adjacent to 16445 Addison Road that Company has leased, or intends to lease from City, as further described and depicted in Exhibit 1.

"Improvements" shall mean the Site Improvements and Taxiway Improvements, collectively.

"Payment Request" shall mean Company's written request(s) to City for payment of the City's share of the Project costs prepared in conformance with Article III of this Agreement.

"Project" shall mean the construction the Improvements in conformance with this Agreement and the Construction Contract, including, without limitation, all design, administration, and construction work related thereto.

"Site Improvements" shall mean the pavement repair and reconstruction work on the aircraft apron to be performed on the Ground Lease Property, as depicted in Exhibit 1 and more particularly described in Exhibits 2 and 3.

"Taxiway Improvements" shall mean the pavement repair and reconstruction work to be performed within the Taxiway Uniform Common Area, as depicted in **Exhibit 1** and more particularly described in **Exhibits 2 and 3**.

"Taxiway Uniform Common Area" shall mean the paved land area abutting the Ground Lease Property, being approximately forty-five feet wide by one-hundred and eighty feet in length fifty-five feet within the eastern Object Free Area to Taxiway Uniform, as further described and depicted in Exhibit 1.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Article III The Project

3.1 <u>The Project</u>. Subject to the terms and conditions set forth herein, Company agrees to cause the Commencement and the Completion of the Construction of the Project as set forth herein in accordance with the Design Plans. Company shall ensure that the Project is performed in a proper, efficient, timely, and professional manner in accordance with this Agreement.

3.2 Project Construction.

- (a) Construction Contract. Company shall promptly enter into a contract with one or more contractors (the "Contractor") to construct the Project (the "Construction Contract").
- (b) Rights of Access; Utilities. City shall grant to Company and its Contractor such rights-of-access to the Project site as may be necessary for the Project, including a revocable, nonexclusive license to access and enter upon the Taxiway Improvements site for the sole purpose of constructing the same. Company's right of access is subject to the City's safety requirements within any portion of the Airport's Common Area as defined in the Rules and Regulations. Company shall be responsible for coordinating with City and utility providers to minimize the possibility of damage to utilities and any disruption to users and tenants of the Airport within proximity of the Project site.
- (c) Inspections. Company shall routinely and thoroughly inspect or cause the construction work to be inspected by the engineer that prepared the Design Plans, or other qualified licensed engineer familiar with the Design Plans, to ensure the materials and workmanship on the Project are performed in conformance with the Design Plans and to guard against defects and/or deficiencies in the Project without assuming responsibility for the means and methods used by the Contractor. Additionally, City shall have the right to inspect, test, measure, or verify the work on the Project at any time; provided that the City shall not assume any responsibility for inspection of the work or the means and methods used by the Contractor in connection with the same.
- (d) Progress Reports. Company shall keep the City regularly informed regarding the progress of the construction work on the Project. In particular, Company shall provide City written notification (including supporting documentation as may be reasonably requested by City) for the following events: (i) award of the Construction Contract (including copies of bonds and insurance), (ii) notice to proceed to Contractor, (iii) any alleged or actual default of the Contractor (including Company's notice to Contractor re the same), and (iv) substantial completion of the work on the Project (or any portion thereof) such that it is ready for final inspection by the City.
- (e) Change Orders. All change orders with respect to the design or construction of the Project must be approved in writing by the City. No change order shall result in the total Project costs identified in the approved Construction Contract exceeding one-hundred and ten percent (110%) of the anticipated Project costs, as more particularly described in the opinion of probable costs attached hereto as <u>Exhibit 3</u>.
- (f) Construction Schedule. Company shall cause Completion of Construction of the Project to occur not later than the 356^{th} calendar day following the Effective Date, subject only to extension in the event of Force Majeure.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (g) Compliance with Plans; Applicable Laws. All work on the Project shall be performed in a good and workmanlike manner and constructed in accordance with the Plans and all Applicable Laws.
- (h) Inspection of Records. Company and Contractor shall grant City the right to examine or inspect, at City's election, all records relating to the Project during the Term of this Agreement and any retention period herein. City's examination or inspection of such records may be performed by a City designee, which may include an outside representative engaged by City. Company and Contractor shall retain all records relating to the Project for a minimum of four (4) years following the expriation or earlier termination of this Agreement, unless there is an ongoing dispute under this Agreement or the Construction Contract; then, such retention period shall extend until final resolution of the dispute.
- (i) Certification of No Conflicts. Company shall require Contractor to warrant that Contractor has made full disclosure to City in writing of any existing or potential conflicts of interest related to Contractor's performance of the work under the Constructgion Contract. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor shall be required to immediately make full disclosure to the City in writing.
- (j) Additional Obligations of Company. Company shall timely pay the Contractor in accordance with the terms and conditions of the Construction Contract. Upon Completion of Construction of the Project, Company shall ensure that the real property upon which the Project was constructed is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Company, any Contractor, or any subcontractor or material suppliers.
- (k) No Waiver of City's Rights. Neither City's review, approval or acceptance of, nor payment for any of the construction work performed by Contractor shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 3.3 <u>Project costs.</u> The total Project costs, including all change orders thereto, is anticipated to be \$787,307.67, as more particularly described in the statement of probable costs attached hereto as <u>Exhibit</u> 3. Although the parties anticipate the final amount of the Construction Contract may differ from the anticipated Project costs, in no event shall the total amount of the Construction Contract exceed one-hundred and ten percent (110%) of the anticipated Project costs without prior written approval of City, which may be withheld at City's sole discretion. Notwithstanding the foregoing, if the Project costs proposed by the Contractor exceeds one-hundred and ten percent (110%) of the anticipated Project costs, City and Company may agree to (i) work together to modify the Project scope to cause the Project costs not to exceed one-hundred and ten percent (110%) of the Project costs as determined above, or (ii) terminate this Agreement with each party paying their respective share of the costs (as set forth in <u>Exhibit 3</u>) incurred through the date of termination.
- 3.4 <u>City Cost Participation.</u> City has requested, and Company agrees, to construct the Taxiway Improvements for the benefit of the Airport and the public in accordance with the Design Plans in conjunction with the Site Improvements. Accordingly, City agrees to reimburse Company the City's share of the actual Project costs which Company pays its Contractor to construct the Project in conformance with the cost allocation schedule provided in <u>Exhibit 3</u> (the "<u>City Cost Participation</u>"). Notwithstanding the foregoing, in no event shall the City's reimbursement amount not exceed thirty percent (30%) of the total Project costs (excluding City requested upgrades for which the City shall be responsible for one hundred percent (100%) of the total costs).

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

The parties acknowledge that the Improvements will be owned by the City. City agrees to provide to Company and Contractor within five (5) days after the Effective Date: (a) a W-9 for the City; and (b) a copy of the City's tax exemption certificate.

- 3.5 <u>Reimbursement Procedures</u>. Subject to the terms and conditions of this Agreement, the City shall reimburse Company for the Project costs in conformance with the cost allocation schedule provided in <u>Exhibit 3</u> as follows:
 - (a) Payment Requests. City agrees to pay the City Cost Participation in installments as construction progresses based on completed Payment Requests delivered by Company to City for review and approval. All Payment Requests shall include the following (which shall be conditions precedent to payment):
 - a true and correct copy of the applicable invoice(s) submitted by the Contractor to Company (together with all attachments, documents, and materials applicable thereto);
 - (ii) certification from Company's design/project engineer that the Contractor's invoice is fair and reasonable for the work completed and materials delivered to the Project;
 - (iii) certification from Company that the work for which reimbursement has been requested has been completed by Contractor and paid by Company in compliance with the Construction Contract and this Agreement;
 - (iv) duly executed partial lien waivers from Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the work completed; and
 - (v) a certificate from the Design Professional that the applicable work has been completed in accordance with the Design Plans.
 - (b) Approval of Payment Request. City shall review and approve, approve in part and deny in part, or deny in its entirety each Payment Request not later than ten (10) days after receipt of the Payment Request. In the event the City denies all or a portion of a Payment Request, the City will provide a written description of the reason for the denial. Company may submit an amended Payment Request, which shall be reviewed and considered for payment in the same manner as the original. Payment Requests shall not be submitted to City more than once per calendar month and not earlier than thirty (30) days after the immediately previous Payment Request was delivered to City.
 - (c) Payment. Provided that Company is not then in default of this Agreement beyond any applicable cure period City agrees to pay Company all undisputed amounts set forth in the Payment Request (less the Retainage) not later than twenty (20) days after approval of the Payment Request by the City. Payment of City's Retainage (defined below) shall constitute the last and final payment to be made by the City to Company pursuant to this Agreement, and completion of all of the City's obligations hereunder.
 - (d) Retainage. Notwithstanding paragraph (c), above, City shall withhold an amount equal to ten percent (10.0%) of the City Cost Participation set forth in the Payment Request (the

Chapter 212 Developer Participation Agreement (Scarborough Airport I, L.)	P)
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"<u>Retainage</u>"). City shall not be required to pay the Retainage to Company until after Completion of Construction of the Project and Company's delivery and City's acceptance of the following:

- Certification by the Design Professional (sealed by the Design Professional) that the Project has been fully and finally completed in accordance with the Construction Contract and Design Plan;
- (ii) certification from Company that the Project has been finally completed in accordance with the Construction Contract, this Agreement, and all Applicable Laws:
- (iii) the City's receipt of a written certification from Company that the final payment for the construction of the Project has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same; and
- (iv) all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Project.

Article IV Surety, Insurance and Indemnification

- 4.1 <u>Construction Sureties.</u> Company shall provide to the City evidence of the following guaranteeing the faithful performance of the Project and the payment of all obligations arising under the Construction Contract:
 - (a) Payment and Performance Bonds. Prior to Commencement of Construction Company shall provide to the City surety bonds guaranteeing the performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Project costs.
 - (b) Maintenance Bond. Company warrants and represents that it will repair or cause to be repaired any defects in the work herein contracted to be done and performed for a period of one (1) year from the date of the City's acceptance of the Project. Upon Completion of Construction of the Project, Company shall submit a surety bond guaranteeing workmanship and materials for a period of one (1) year from the Completion of Construction.
 - (c) Surety Requirements. Company shall pay or cause the Contractor to pay the premiums for all bonds required to be provided under this Section 4.1. All bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City and shall list Company and City as joint beneficiaries.
- 4.2 <u>Insurance</u>. Company shall maintain minimum insurance policies and coverages described in this section at all times during the Term of this Agreement. Company may satisfy this requirement through insurance provided by its Contractor.

Chanter 212 Dev	eloner Particinati	on Agreement (Sca	rborough Airport I. LP)

- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
 - "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
 - (i) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.
- (f) The following additional requirements shall apply to the foregoing insurance policies:
 - The City shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
 - (ii) All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - (iii) A waiver of subrogation in favor of the City, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
 - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
 - (v) All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
 - (vi) All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

- (viii) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and written on forms filed with and approved by the Texas Department of Insurance.
- (x) Certificates of Insurance delivered to Company and City prior to the Commencement of Construction (or within 15 days after the Effective Date if construction has already commenced)
 - Company shall require the Contractor to require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements.
- (xi) City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

4.2 Indemnification

COMPANY COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY, AND SUCH ELECTED OFFICIALS, AND OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY EACH BEING AN "ADDISON PERSON"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) WORK TO BE PROVIDED BY COMPANY AND THE CONTRACTOR IN CONNECTION THE PROJECT; (2) REPRESENTATIONS OR WARRANTIES BY COMPANY UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY COMPANY, THE CONTRACTOR, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, OR LICENSEE OF COMPANY, OR ANY OTHER PERSON OR ENTITY FOR WHOM COMPANY IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, AND REPRESENTATIVES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT NOT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY ADDISON PERSON.

Notice of Claim. Company shall promptly advise the City in writing of any claim or demand against any Addison Person or Company related to or arising out of Company's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Company's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

THE PROVISIONS OF THIS SECTION 4.2, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Article V Default: Termination: Abandonment

- 5.1 Default by Contractor. Should Company fail to comply with any term or condition this Agreement applicable to Company, Company shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if Company's default is not corrected within twenty (20) days after written notice by City, City may, at its sole discretion and without prejudice to any other right or remedy:
 - (a) terminate this Agreement and be relieved of any further payment or consideration to Company except for reimbursement, pursuant to an approved Payment Request, of the City's portion of the Improvements determined by City to be satisfactorily completed prior to such termination; or
 - (b) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Company's sole expense.
- 5.2 <u>Default by City.</u> Should City fail to comply with any term or condition this Agreement applicable to City, City shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if City's default is not corrected within twenty (20) days after written notice by Company, Company may terminate this Agreement.
- 5.3 Extension of Initial Cure Period. During the initial cure period, if the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter continuously and diligently prosecutes the curing of such default, the initial cure period shall be extended for such period as may be necessary to cure such default, provided, that in no event shall such extension exceed forty (40) days following the initial occurrence of the default without the written consent of the non-defaulting party, which may be withheld in the non-defaulting party's sole discretion.
- 5.4 <u>Termination by City.</u> The City may terminate this Agreement without notice or any opportunity upon the occurrence of any of the following:
 - (a) Adjudicated insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, Company;
 - (b) Filing of a petition under any section 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 the Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company;
 - (c) Appointment of a receiver or trustee for all or substantially all of the assets of the Company;
 - (d) Abandonment of the Project pursuant to Section 5.5, below; or

Chapter 212 Developer	Participation A	greement (Scarborough	Airport I I.P)

- (e) The Company is in default of any ground lease or other lease or arrangement with the City beyond the expiration of applicable notice and cure periods.
- Abandonment. Notwithstanding any other provision of this Agreement, If Company and/or the Contractor should abandon and fail or refuse to resume the Project within ten (20) days after written notification from City to Company, then, the surety on the performance bond(s) may be notified in writing by City of such abandonment and directed to complete the Project, with a copy of said notice delivered to Company and Contractor. After receiving said notice of abandonment, neither Company nor Contractor may remove from the Project site any machinery, equipment, tools, materials or supplies then on site, and the same, together with any materials and equipment under contract for the Project may be held for use on the Improvements by the City or the surety on the performance bond(s), or another contractor in completion of the Project. In such event neither Company nor Contractor shall receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the Project and be reflected in the final settlement of the City's Cost Participation under this Agreement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the Project in either of the following elective manners:
 - (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Company, which may be paid by City out of the City's allocated share of the Project costs and applied as a credit to City's Cost Participation, or any other amounts that may at any time become due to the Company under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the City; or
 - (2) the City may (under sealed bids when and in the manner required by law) let the contract to another contractor for the completion of the Project under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what the City would have been obligated to pay under this Agreement, such increase shall be charged to the Company and Company's sureties shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith
- 5.6 <u>Remedies Cumulative</u>. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided in this Article.
- 5.7 Force Majeure. No party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each an event of "Force Majeure"). The party asserting Force Majeure shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii)

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Article VI Miscellaneous

- 6.1 No Joint Venture. Company is an independent contractor, and Company shall accomplish all of its obligations under this Agreement in such capacity. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties (or between City and Contractor). The City shall have no control or supervisory powers as to the detailed manner or method of Company's performance of the subject matter of this Agreement nor the Contractor's means and methods of construction related to the Project.
- 6.2 <u>Assignment.</u> Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.
- 6.3 No <u>Third Party Beneficiaries</u>. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
- 6.4 <u>Survival</u>. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.
- 6.5 No Waiver. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.
- 6.6 <u>Exhibits</u>. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.
- 6.7 Governing Law. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; 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. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.
- 6.8 Entire Agreement. This Agreement supersedes all previous agreements regarding the matters set forth herein and constitutes the entire understanding of the parties. Company shall be entitled to

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Except for the obligations of Company under this Agreement, neither Company nor any other owner of the Property shall have any further obligations under the Master Facilities Agreement.

- 6.9 <u>Severability</u>. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 6.10 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

To City:

Town of Addison, Texas c/o City Manager P.O. Box 9010 Addison, Texas 75001 Email: wpierson@addisontx.gov To Company:

Scarborough Airport I, LP 16380 Addison Road Addison, Texas 75001 Attn: Mr. James R. Feagin jfeagin@landmarkinterests.com

and

Town of Addison, Texas c/o Assistant Director – Real Estate 4545 Jimmy Doolittle Drive, Suite 200 Addison, Texas 75001 Email: bill.dyer@addisonairport.net

6.11 <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 Agreement on behalf of the parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY – SIGNATURES ON FOLLOWING PAGE(S)]

Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date. For City: For Company: Town of Addison, Texas Scarborough Airport I, LP a Texas limited partnership By: Scarborough I Airport GP, LLC, a Texas Wes Pierson, City Manager limited liability company, its general partner Date:_ James R. Feagin, Manager Date: _ Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP) Page 13

EXHIBIT 1

PROJECT SITE DESCRIPTION

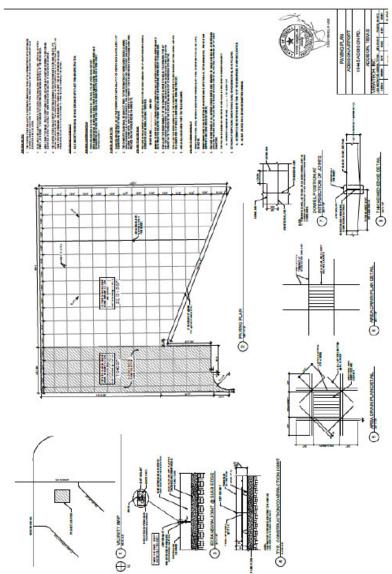
DEPCTION OF SCARBOROUGH SITE IMPROVEMENTS AND CITY TAXIWAY CITY IMPROVEMENTS



Exhibit 1: Project Site Description Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 2

DESIGN PLANS



Full Size Drawing Available in City Airport Archives

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 3 DESIGN PROFESSIONAL'S STATEMENT OF PROBABLE COST

			SCARBORO	SCARBOROUGH DEVELPEROR PARTICIPATION	TOR PARTICIPA	NOITA				
			AIIIC	REVISED 6/20/2022	6/20/2022					
							COMPANY	JUVINJ NAIO	CITY UPGRADE	CITY TOTAL
L		City	OUANTITY	ESTIMATED	L			THE CHICAGO		
SPEC. NO.	WORK/MATERIAL DESCRIPTION	Upgrade	TINO	QUANITY	UNIT PRICE	PROJECT COSTS	70%	30%	100%	
	1 Demolish 6" existing paving	No	S.F.	31,616.00	\$4.35	\$137,529.60	\$96,270.72	\$41,258.88	\$0.00	\$41,258.88
	2 Excavate and hauloff 4" of cut	No	S.Y.	410.00	\$44.55	\$18,265.50	\$12,785.85	\$5,479.65	\$0.00	\$5,479.65
	3 Lime stabilize 6" of subgrade as per report	No	S.F.	31,616.00	\$1.75	\$55,328.00	\$38,729.60	\$16,598.40	\$0.00	\$16,598.40
	4 Place / finish 10" concrete with steel as per plans	No	S.F.	31,616.00	\$15.80	\$499,532.80	\$349,672.96	\$149,859.84	\$0.00	\$149,859.84
	5 Saw cutting as per plans	No	S.F.	31,616.00	\$0.17	\$5,374.72	\$3,762.30	\$1,612.42	\$0.00	\$1,612.42
	6 Sealant as per plans	No	S.F.	31,616.00	\$0.25	\$7,904.00	\$5,532.80	\$2,371.20	\$0.00	\$2,371.20
	7 Construction staking and grades	No	EA.	1.00	\$4,167.50	\$4,167.50	\$2,917.25	\$1,250.25	\$0.00	\$1,250.25
	8 Traffic control	No	EA.	1.00		\$3,570.00	\$2,499.00	\$1,071.00	\$0.00	L
	9 Builder risk policy	No	EA.	1.00	\$4,165.00	\$4,165.00	\$2,915.50	\$1,249.50	\$0.00	\$1,249.50
-	10 \$5 mil - mbrella policy	No	EA.	1.00	\$5,950.00	\$5,950.00	\$4,165.00	\$1,785.00	\$0.00	\$1,785.00
-	11 Performance bond	ON	EA.	1.00	\$21,338.55	\$21,338.55	\$14,936.99	\$6,401.57	\$0.00	\$6,401.57
	12 General Conditions	ON	EA.	1.00	\$24,182.00	\$24,182.00	\$16,927.40	\$7,254.60	\$0.00	\$7,254.60
1	13	671150 541	10000000		tiga manga at ngar	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
-	14					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1	15					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1	16					\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
						\$787,307.67	\$551,115.37	\$551,115.37 \$236,192.30	\$0.00	\$236,192.30
	AREA CALCULATION:				Abbreviation Key	Key				
	Scarborough area as per plan	70%	22,131.50	st	SY = Square Yards	ards				
	City of Addison area proposed area	30%	9,484.50	sf	CY=Cubic Yards	ds				
	Total courses feet	100%	100% 31.616.00 ef	t,	IE= Linear Feet	-				

Exhibit 3: Statement of Probable Costs Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

Ground Lease Addendum #1

CONSTRUCTION OF NEW LAND IMPROVEMENTS (Excluding Future Land Improvements)

This Ground Lease Addendum #1 is hereby made a part of that certain Ground Lease Agreement by and among Town of Addison, Texas and Scarborough I Airport, LP with the Effective Date of _______, 202___, which is incorporated hereto by reference. All capitalized terms used herein are the same as defined in the Ground Lease or any other Addendum attached and made a part of the Ground Lease unless otherwise expressly stated otherwise herein.

To induce the City to enter into the Ground Lease and to grant Tenant the Extended Term, concurrently with the Ground Lease, the City and Tenant have entered or intend to enter into a separate Developer Participation Contract ("Developer Contract") of same Effective Date (an executed copy of which, shall be attached to the Ground Lease as Exhibit 5 and incorporated herein by reference), where Tenant agrees to construct or cause to construct certain New Land Improvements (herein so called) made unto the Demised Premises and adjacent and abutting airport land as expressly provided for in the Developer's Contract and where the City shall reimburses the Tenant for design and construction costs associated with the City's share of Tenant's construction costs as expressly provided for in the Developer's Contract.

Scarborough Airport I, LP Ground Lease Addendum I

Ground Lease Addendum #2

CONSTRUCTION OF FUTURE LAND IMPROVEMENTS (Excluding New Land Improvements)

This Ground Lease Addendum #2 is hereby made a part of that certain Ground Lease Agreement by and among Town of Addison, Texas and Scarborough I Airport, LP with the Effective Date of _______, 202___, which is incorporated hereto by reference. All capitalized terms used herein are the same as defined in the Ground Lease or any other Addendum attached and made a part of the Ground Lease unless otherwise expressly stated otherwise herein.

- Except as provided for in the Ground Lease, Tenant may not construct, locate, install, placed or erect any other improvements upon the Demised Premises without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed.
- 2. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant may have cause during the Term to construct buildings and other real property improvements ("Future Land Improvements") on the Demised Premises, which shall be at Tenant's sole cost, expense and risk (except as may be otherwise agreed to in writing by Landlord and Tenant) in accordance with the Design Plans (as defined below). Tenant is not required to construct any Future Land Improvements. The provisions of this Addendum shall only be applicable if Tenant elects to construct any Future Land Improvements. The improvements described in the Developer Contract shall not constitute Future Land Improvements for purposes hereof.
- 3. The Future Land Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared signed and stamped by an architect and/or engineer selected by Tenant (the "Design Plan"), which Design Plan shall be submitted to Landlord and approved in writing by Landlord evidenced by the issuance of a building permit or other means as determined by Landlord, which shall not be unreasonably withheld, conditioned or delayed.
- Any architect or engineer engaged by Tenant pursuant to this Ground Lease Addendum #2 shall be duly licensed to practice architecture or engineering in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including incidental, special damages and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage, destruction or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction or violation of this Lease with respect thereto, and TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS DESCRIBED IN THE PRECEDING SENTENCE (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE "DAMAGES") ARISING OUT OF TENANT'S USE OF THE DEMISED PREMISES, BUT EXCLUDING ANY DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF LANDLORD OR ANY PARTY ACTING ON ITS BEHALF. THIS INDEMNIFICATION

Scarborough Airport I, LP Ground Lease Addendum #2

SHALL SURVIVE THE TERMINATION OF THIS LEASE. It is expressly understood and agreed that Tenant's construction of the Future Land Improvements shall include the finish-out in accordance with the plans and specifications for the finish-out of the Future Land Improvements as submitted by Tenant to Landlord in the approved Design Plan.

- 5. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.
- 6. After construction of the Future Land Improvements commencement, Tenant shall complete construction with reasonable diligence and in conformance with the Design Plan. Any material deviation from the Design Plan shall be subject to the prior review and written approval of Landlord.
- 7. If Tenant fails to achieve Final Completion (as defined below) of said Future Land Improvements within 90 days after construction of the Future Land Improvements commences, subject to events of Force Majeure, such failure shall constitute an event of default of the Lease if not cured within the notice and cure periods set forth in this Lease. In such event, Landlord may terminate this Lease by giving written notice to Tenant pursuant to Section 23. B of the Lease.
- 8. Tenant agrees that any construction or modification of the Future Land Improvements or any other improvements which may be authorized in writing by Landlord on or within the Demised Premises shall be performed in substantial compliance with all Laws. Tenant recognizes that construction/maintenance standards and specifications, the City's building and related codes and zoning requirements, and all applicable state and federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Future Land Improvements pursuant to the approved Design Plan.
- 9. Tenant will properly and timely submit to the FAA the TxDOT, and any other governmental authority, entity or agency having jurisdiction regarding the Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over the Airport.
- 10. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises and all parts thereof during normal business hours, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

Scarborough Airport I, LP Ground Lease Addendum #2

- 11. "Final Completion" of the construction of the Future Land Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Future Land Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Future Land Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.
 - 11. In connection with any construction on the Demised Premises:
- A. During any period of construction, a Builder's Risk Completed Value policy with an all-risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$5,000.
- For any Future Land Improvement with a total hard construction cost (material and labor only) value in excess of Five Hundred Thousand Dollars (\$500,000) in excess of the portion of the cost of such Future Land Improvements to be paid by Landlord, Tenant shall cause to be issued in favor of Landlord, at Tenant's sole cost and expense, and kept in full force and effect at all times during any period of construction, either a payment and performance bond or an irrevocable, standby letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Future Land Improvements), in the amount of one hundred percent (100%) of the construction costs (the "Letter of Credit"), such Letter of Credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred and is continuing under this Lease with respect to the construction of the Future Land Improvements and Tenant has not cured the event of default after being given notice and a reasonable opportunity to cure as provided in the Lease. The Letter of Credit shall be of form and substance acceptable to Landlord. Tenant shall cause the original executed Letter of Credit to be delivered to Landlord as a precondition to the mobilization of construction. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the Letter of Credit on a calendar quarterly basis (or some other frequency acceptable to Landlord) by an amount equal to the construction costs incurred and paid by Tenant, less any contractual retainage as evidenced by Tenant's certified payment affidavit sign by Tenant's architect or, inspecting engineer. Such requested reduction of the Letter Credit balance shall be further reduced by any written contractor, subcontractor and or vender claims at time of the request.
- 12. Subject to extension for delays caused by Force Majeure events, failure of Tenant to observe and comply with the requirements of this <u>Ground Lease Addendum #3</u>, subject to notice and cure as provided in <u>Section 23(B) of the Lease</u>, shall be an Event of Default.

Scarborough A	Airport I, LP
Ground Lease	Addendum #2

Site Location of 16445 Scarborough I Airport, LP Ground Lease at 16445 Addison Road



