



**Application for Addison Airport Access Permit**  
**For Purpose to Access Addison Airport from an**  
**Adjacent Property for Aeronautical Purposes**  
**Effective January 1, 2007<sup>1</sup>**

<b>Name of Applicant:</b>	
Off-Airport Property Legal Address: <i>Street Address and Lot &amp; Block description used by Dallas County Appraisal District (DCAD)</i>	
Off-Airport User's Notice Address: <i>(If different from the Off-Airport Property Address)</i>	
Off-Airport User's Telephone Number:	
Off-Airport User's Telecopy (fax) Number:	
Off-Airport User's E-Mail Address: <i>For general notices and routine airport correspondence</i>	
Off-Airport User's Stated Use: <i>(as defined in the Access Ordinance)</i>	<i>Check only one:</i> <input type="checkbox"/> <b><u>Commercial Aviation Use</u></b> <input type="checkbox"/> <b><u>Recreational/Incidental Business Use</u></b>
Gross Land Area: <i>(for Commercial Aviation Use only)</i>	
Access Fee Amount <i>(for Initial Term):</i>	If Recreational/Incidental Business Use: <b>\$750.00/YR</b> If Commercial Aviation Use: \$ _____ <b>per year</b> (\$.08 times each square foot of the gross land area of the Off-Airport Property)

**If Commercial Aviation Use**

Applicant acknowledges the Access Area shall be used solely for the conduct of aviation-related activities and aircraft operations on the Access Area in accordance with the terms of the Access Permit Agreement and all ordinances, laws, rules, regulations, standards, plans, policies and permits of the City, the FAA,

<sup>1</sup> In accordance with Ordinance No. 006-054 amending Chapter 14 (Aviation) of the Code of Ordinances of the Town of Addison, Texas amending Division 3 to Article III of Chapter 14 adopted by the City Council November 28, 2006.

TxDOT, and any government (whether federal, state, or local) entity, agency, department, commission or board having jurisdiction over, at, or in connection with the Airport.

Please provide a description of the business services to be offered and details of any FAA certifications under which Applicant will be operating:

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**Authorized and Unauthorized Airport Access**

Use and access to the Airport from an Off-Airport Property may be permitted to an Off-Airport User subject to the terms and conditions of an Access Permit issued by the City as provided for in Section 14-105 (the "Access Permit") of the Code of Ordinances of the Town of Addison, Texas (the "Ordinance"). The Access Permit allows an Off-Airport User the unique privilege of accessing the Airport from an Off-Airport Property for either a Recreational/Incidental Business Use or a Commercial Aviation Use. Such privilege is granted for the term specified in, and is subject to all of the terms and conditions of the Ordinance, the Access Permit, and all applicable laws, ordinances, rules, codes, standards, policies, regulations, grant assurances, and grant agreements, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded, and subject to the use of the Airport for airport purposes and the Off-Airport User's compliance with and fulfillment of all of the terms, conditions, provisions and regulations of the Ordinance, all applicable laws, rules, and regulations, and the Access Permit.

Applicant acknowledges that any unauthorized access to the Airport either by foot, vehicle or aircraft is expressly prohibited. The Airport Manager may, during its consideration of this Application or at any other time, recommend to the City Manager that pedestrian, vehicular, and aviation access between the Off-Airport Property and the Airport be controlled at all times using automated controlled-access devices, gate operators, closers with automatic locks or other such reliable devices, or any other means of affirmative control that will continually safeguard the Airport from unauthorized access from the Off-Airport Property. If access to the Airport from an Off-Airport Property is not authorized by the City or Airport Manager for any reason (including, without limitation, for breach by an Off-Airport User of an Access Permit), and the City constructs or places a fence or other barrier to prevent access to the Airport from an Off-Airport Property, the Off-Airport User shall, as a condition precedent to obtaining access to the Airport, reimburse the City for all costs incurred by the City from constructing or placing and removing the fence or other barrier.

**Aircraft to be Based or Routinely Located on the Off-Airport Property**  
(regardless of whether it is owned or controlled by Applicant):

Aircraft Make and Model: _____	Aircraft Registration #: _____
Name of Owner of Aircraft: _____	Owner's Telephone: _____
Address of Owner _____ <i>City, State &amp; Zip</i>	Owner's Email: _____
Name of Lessee, if any: _____	Lessee Telephone: _____
Address of Lessee: _____ <i>City, State &amp; Zip</i>	Lessee Email: _____

Aircraft Make and Model: _____	Aircraft Registration #: _____
Name of Owner of Aircraft: _____	Owner's Telephone: _____
Address of Owner _____ <i>City, State &amp; Zip</i>	Owner's Email: _____
Name of Lessee, if any: _____	Lessee Telephone: _____
Address of Lessee: _____ <i>City, State &amp; Zip</i>	Lessee Email: _____

Aircraft Make and Model: _____	Aircraft Registration #: _____
Name of Owner of Aircraft: _____	Owner's Telephone: _____
Address of Owner _____ <i>City, State &amp; Zip</i>	Owner's Email: _____
Name of Lessee, if any: _____	Lessee Telephone: _____
Address of Lessee: _____ <i>City, State &amp; Zip</i>	Lessee Email: _____

*If more Aircraft are to be registered, duplicate this page and attach as needed*

**Application Review and Approval Procedure.** The Airport Director shall review and consider this Application for its sufficiency in accordance with the Ordinance and as directed by the Town of Addison. The Airport Director may require additional information and/or documentation from Applicant about the Off-Airport User’s intended aeronautical activities under the Permit and to ensure adequate measures will be put in place by the Applicant restricting unauthorized access to the Airport from the Off-Airport Property. Once satisfied, the Airport Director shall deliver to the City Manager: (i) a copy of this Application and other relevant information, (ii) an Access Permit signed by the proposed Off-Airport User, (iii) acknowledgement of receipt of any fees due to the City in accordance with the Access Permit, and (iv) the Airport Director’s written recommendation for the City Manager’s consideration. The City Manager shall either approve or disapprove the Application.

**Acknowledgement:** The Applicant named above certifies to the best of their knowledge the above information is true and correct and that they have received a copy of Division 3 of Article 3 of Chapter 14, as amended and modified, of the Code of Ordinances for the Town of Addison, Texas together with the current Off-Airport Access Permit Agreement in advance for their own review and understanding. It is recommended that the Applicant seek qualified legal counsel prior to completing this Application for a complete and thorough understanding of all the terms and conditions, obligations, rights, reservations and limitations, implied or otherwise stated of Applicant and the Town of Addison. Only the Town of Addison has the capacity to extend and execute an Off-Airport Airport Access Permit, the Airport Director has no legal authority to bind the Town of Addison or Addison Airport to any such permit or arrangement.

Applicant’s Signature: \_\_\_\_\_

Applicant’s Name Printed: \_\_\_\_\_

Date: \_\_\_\_\_

*For Airport Management Use:*

<b>Application Received Date:</b>	_____/_____/_____
<b>Airport Manager’s Comments:</b>	
<b>Airport Director’s Recommendation &amp; Date Forwarded To City Manager</b>	<input type="checkbox"/> Recommend Permit Issued <input type="checkbox"/> Recommend Permit Issued w/ Conditions (See comments above) <input type="checkbox"/> Do not recommend permit to be issue (See comments above)
<b>Date:</b>	_____/_____/_____
<b>City Manager’ Signature:</b>	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <hr/> Ron Whitehead, City Manager

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 06-054

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION) OF THE CODE OF ORDINANCES OF THE CITY BY AMENDING DIVISION 3 OF ARTICLE III (MUNICIPAL AIRPORT) THEREOF IN ITS ENTIRETY RELATING TO ACCESS FROM PROPERTY ADJACENT TO ADDISON AIRPORT AND PROVIDING FOR FEES AND CHARGES FOR SUCH ACCESS; ESTABLISHING A PROCESS FOR THE ISSUANCE OF AN ACCESS PERMIT; PROVIDING THAT THE UNLAWFUL ACCESS TO OR FROM THE AIRPORT FROM AN OFF-AIRPORT PROPERTY SHALL BE A MISDEMEANOR PUNISHABLE BY FINE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Amendment.** Chapter 14 (Aviation) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended by amending Division 3 to Article III (Municipal Airport) of Chapter 14 in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

**Section 2. Savings.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that notwithstanding the amendment to Division 3, Article III, Chapter 14 of the Code as provided for in this Ordinance, Division 3, Article III, Chapter 14 of the Code as it existed prior to the adoption and the effective date of this Ordinance shall continue in effect for purposes of all matters concerning access to Addison Airport prior to the effective date of this Ordinance, including, without limitation, matters concerning payment of fees for access to Addison Airport and matters concerning any complaint, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen.

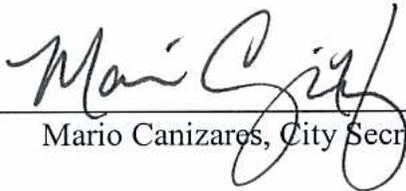
**Section 3 Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 4. Effective Date.** This Ordinance shall become effective from and after its date of passage and publication as may be required by law.

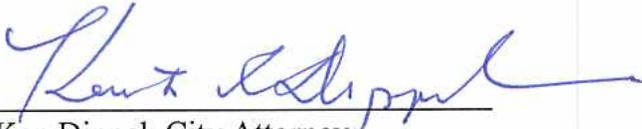
**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 28th day of November, 2006.

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

ATTEST:

By:   
\_\_\_\_\_  
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Ken Dippel, City Attorney

# **EXHIBIT A**

## **DIVISION 3. OFF-AIRPORT ACCESS TO AIRPORT**

### **Section 14-100. Definitions.**

The following words, terms and phrases, when used in this Division 3 shall have the meanings ascribed to them in this Division, except where the context clearly indicates a different meaning:

*Access Permit* means a permit issued by the Town of Addison to an Off-Airport User permitting the Off-Airport User the unique privilege of using the Airport Public Area directly from the Off-Airport Property for either a Recreational/Incidental Business Use or Commercial Aviation Use.

*Access Taxiway* means an aircraft taxiway located on Off-Airport Property that connects or feeds into a taxiway on the Airport and that is constructed for or intended to be used for the principal purpose of allowing aircraft to taxi between the Airport and one or more Off-Airport Properties and is approved as an access taxiway by the City as evidenced by plat approval, easement dedication or as reflected in the Airport Layout Plan.

*Airport Public Area Expenses* means an amount of money equal to all known expenses and costs incurred or expended by the City to operate the Airport Public Area for the benefit, use and privilege of the general aviation public during the most recently completed fiscal year as accounted for by the City, and being an amount equal to Total Airport Expenses adjusted by (i) a reduction for any expenses and costs directly attributed to the operation and maintenance of Non-Public Airport Facilities, (ii) a reduction using a commercially reasonable allocation of Airport related expenses and costs that cannot be specifically attributed to either the expense and cost of operating the Airport Public Area or Non-Public Airport Facilities of the Airport (e.g., without limitation, the pro-rated costs of City staff overhead related to Airport operation and maintenance, Airport management fee, and certain maintenance tools and material used while maintaining the Airport without distinction to its public and non-public use), (iii) a reduction as a result of Public Revenue actually collected, and (iv) an allowance for the City's five (5) year Airport capital improvements plan reserve.

*Airport Public Area Maintenance Rate* means a dollar amount calculated on a per square foot basis of the Airport Public Area Expenses by dividing the Airport Public Area Expenses by the total land area (in gross square feet) of all Non-Public Airport Facilities and Total Off-Airport Properties.

*Affiliate* means a person or entity owning a majority interest in an Off-Airport Property or a family member of an owner of an Off-Airport Property.

*Aircraft Owner* means anyone who owns or leases a specific aircraft and holds the exclusive right to fly or sell the aircraft (including but not limited to an individual, corporation, chief pilot, leasing company, or aircraft manager).

*Airport* means the area known as the Addison Airport which is now or hereafter designated and set aside for the landing and taking off of aircraft, and accessory or appurtenant uses, facilities and improvements thereto, and used or to be used in the interest of the public for such purposes.

*Airport Director* means the director or manager of the Airport (whether designated pursuant to a contract between the City and a third party or otherwise).

*Air Navigation Facility* means: (a) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality; (b) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or (c) a combination of those facilities or devices.

*Airport Public Area* means that portion of the Airport, which is now or hereafter considered by the FAA, TxDOT, the City, or any other regulatory agency with oversight of the Airport to be the obligation and responsibility of the City to operate and maintain for the common use and benefit of the general aviation public. The Airport Public Area includes, without limitation, any Air Navigation Facility or structure designed and intended to serve the general public not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; any other facility or facilities at the Airport that are eligible for federal or state grants or subsidies awarded on the basis of their serving the benefit of the public (including runways, taxiways, vehicle streets and alleys, public aircraft aprons/tarmac, vehicle parking areas, and drainage structures); field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the Airport; directional signs; and perimeter or restricted access fences. Generally, the Airport Public Area is the total area and facilities of the Airport exclusive of all Non-Public Airport Facilities, and may vary from time to time depending on the total land comprising the Airport and the change of land use at the Airport. (the Airport less Non-Public Airport Facilities equals the Airport Public Area).

*Access Fee* means the fee to be paid annually to the City for access to the Airport from an Off-Airport Property as described in this Division.

*City* means the Town of Addison, Texas, a home-rule municipality.

*City Manager* means the City Manager of the City or the City Manager's designee.

*Commercial Aviation Use* means the operation of a business enterprise providing aviation-related goods, services, or facilities for a commercial purpose (including, without limitation, any activity by the operator securing earnings, income, compensation (including exchange or barter of goods and services), and/or profit from said activities, whether or not such objectives are accomplished) to users of the Airport.

*FAA* means the Federal Aviation Administration or its successor entity.

*Non-Public Airport Facilities* means generally any land, building, or other facility or improvement on the Airport that is subject to or otherwise intended to be subject to an arrangement that prohibits or restricts access or use by the general aviation public. By way of example, a portion of Airport land leased to a third person, together with any improvements thereon constructed by the third person pursuant to the lease, would be Non-Public Airport Facilities.

*Off-Airport Access* means access to the Airport for aviation purposes from Off-Airport Property in accordance with this Division, an Access Permit, and applicable law, rule, or regulation. Off-Airport Access is frequently referred to as a "through-the-fence" operation, even though an airport's perimeter fence may be imaginary.

*Off-Airport Property* means the gross land area of a lot or tract of land which abuts the Airport or an Airport Taxiway and may be used or intended to be used in whole or in part for aviation-related purposes.

*Off-Airport User* means an owner of the fee simple title of an Off-Airport Property who is issued and holds an Access Permit to conduct Off-Airport Access operations as either a Recreational/Incidental Business User or as a Commercial Aeronautical User directly between the Off-Airport Property and the Airport in accordance with the Access Permit issued by the City.

*Public Revenue* means a sum of revenue collected (or a commercially reasonable allocation thereof) by the City available for the offset of the cost to operate and provide airport services and benefits used by the general aviation public. Examples of Public Revenue include, but are not necessarily limited to, an allocated portion of fuel flowage revenue, fund account interest income, U. S. Department of Agriculture trash disposal revenue, and revenue received from the processing and clearing of U. S. Customs operations.

*Recreational/Incidental Business Use* means the use of an Off-Airport Property for aviation operations which is either recreational in nature or is incidental to a non-aviation business conducted on the Off-Airport Property (i.e. a business that uses an aircraft as an incidental use in support of the business, such as, for example, an architect, technology company, or an oil company using an aircraft to transport people, not product).

*Total Airport Expenses* means an amount of money equal to the all known expenses and costs incurred and expended by the City to operate the Airport during the most recently completed fiscal year.

*Total Off-Airport Properties* means the aggregate of all properties, each of which is or may become an Off-Airport Property, as determined by the City.

*TxDOT* means the Texas Department of Transportation or its successor entity.

**Section 14-101. Findings.**

In enacting this Division, the Town finds that:

(a) Off-Airport Access is a unique class of aviation operation at Addison Airport, which is neither itinerant in nature nor based from any aviation facility located within the Airport. Within this class there are two distinct sub-classes: (i) the Recreational/Incidental Business Use, and (ii) the Commercial Aviation Use.

(b) The Airport Public Area constitutes the property and improvements on and within the Airport that are maintained by the City for the public's common use and are available to and used by Off-Airport Users.

(c) The Airport Public Area Expenses constitute the expenses and costs of operation to the City of the Airport Public Area.

(d) Where the aviation use of an Off-Airport Property is a Commercial Aviation Use, such use may compete directly with the operation of commercial aviation enterprises located within the Airport. Accordingly, it is fair, reasonable, and equitable, for the purpose of setting a fee for access to the Airport from an Off-Airport Property, to distinguish between those Off-Airport Users who use their Off-Airport Property primarily for a Commercial Aviation Use, and those who use their Off-Airport Property primarily for a Recreational/Incidental Business Use.

(e) Off-Airport Commercial Aviation Users can be expected to use the Airport in proportion to the gross land area or parcel size of their Off-Airport Property. It is fair, reasonable and equitable to use the gross land area or parcel size of an Off-Airport Commercial Aviation User to allocate and charge each such user for Airport Public Area Expenses as set forth herein.

(f) Off-Airport Recreational/Incidental Business Users can be expected to use the Airport significantly less than Commercial Aviation Users. It is fair, reasonable and equitable to allocate and charge all such users for Airport Public Area Expenses through a flat fee.

(g) Airport Public Area Expenses can be expected to rise with inflation. It is fair, reasonable and equitable to redetermine the Airport Public Area Maintenance Rate and to adjust Access Fees for inflation as set forth herein. Other methods for estimating or measuring the changes in Airport Public Area Expenses over time would be impracticable and unreasonable under the circumstances.

(h) Off-Airport Users provide indirect benefits to the Airport and enhance opportunities for future aeronautical growth and development for the benefit of the Airport, the public and on-Airport operations. It is fair, reasonable and equitable to adjust the Airport Public Area Maintenance Rate as set forth herein to recognize these indirect benefits and to promote the further economic development and use of the Airport and aeronautical properties adjacent to the Airport while ensuring fair and equitable competitive operation as between on-Airport and off-Airport operations.

(i) The fees set forth in this Division for access to the Airport from an Off-Airport Property are reasonable and uniform for the same class of privilege or service, and are established with due regard to the property and improvements used and the expenses of operation to the City.

(j) The terms of this Division satisfy and comply with both Federal law, rules and regulations and State law, including, without limitation, FAA grants and assurances and, to the extent that it applies, the Texas Transportation Code.

**Section 14-102. Access to Airport by Off-Airport User; Lien.**

(a) Any unauthorized access to the Airport Property either by foot, vehicle or aircraft is expressly prohibited. Except for authorized access, including authorized access from an Off-Airport Property as set forth in this Division, the City Manager is charged with the responsibility to safeguard the Airport by constructing and maintaining at all times a fence or other form of barrier sufficient to restrict unauthorized pedestrian, vehicle or aircraft access to and from the Airport Property. If access to the Airport from an Off-Airport Property is not authorized by the City for any reason (including, without limitation, for breach by an Off-Airport User of an Access Permit) and the City constructs or places a fence or other barrier to prevent access to the Airport from an Off-Airport Property, the Off-Airport User shall, as a condition precedent to obtaining access to the Airport, reimburse the City for all costs incurred by the City in constructing or placing and in removing the fence or other barrier.

(b) Use and access to the Airport from an Off-Airport Property may be permitted to an Off-Airport User subject to the terms and conditions of an Access Permit issued by the City as provided for in Section 14-105 of this Division (the "Access Permit"). The Access Permit allows an Off-Airport User the unique privilege of accessing the Airport from an Off-Airport Property for either ca Recreational/Incidental Business Use or a Commercial Aviation Use. Such privilege is granted for the term specified in and is subject to all of the terms and conditions of this Division, the Access Permit, and all other applicable laws, ordinances, rules, codes, standards, policies, regulations, grant assurances, and grant agreements, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded, and subject to the use of the Airport for airport purposes and the Off-Airport User's compliance with and fulfillment of all of the terms, conditions, provisions and regulations of this Division, all other applicable laws, rules, and regulations, and the Access Permit.

(c) Any Access Permit, if issued in the Town's sole discretion, is subject to the initial and ongoing approval and consent by the FAA and by TxDOT, and is subject to the terms, conditions and requirements of any existing or future grant agreement(s) or grant assurance(s) at or in connection with the Airport (and may be revoked, terminated or canceled immediately if any such Access Permit(s) is in violation of any such grant agreement(s) or grant assurance(s) or any FAA or TxDOT policy, rule, permit, standard, or regulation, or any local, state or federal law, policy, rule, permit, standard, or regulation, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded).

(d) The City, by and through the City Manager, may issue an Access Permit in the form approved by the City Manager, provided that such form shall comply with the terms of this Division (but may include additional terms and conditions as approved by the City Manager).

(e) An Off-Airport User shall comply at all times with and abide by all environmental laws, rules, regulations, standards, and policies of any governmental authority (whether federal, state or local, and including, without limitation, the Environmental Protection Agency (or its successor entity), the Texas Commission on Environmental Quality (or its successor entity) and the City), and shall file any and all reports and provide any such information as may be required by any such governmental authority in connection therewith.

(f) An Off-Airport User shall annually submit (on a date set by the Airport Director) a property security plan in form and content acceptable to the Airport Director.

(g) An Off-Airport User shall register and periodically affirm the appropriate contact information of the Off-Airport User as required by the Airport Director. The Off-Airport User shall also register or periodically affirm with the Airport Director all aircraft stored or based at the Off-Airport Property by providing the Airport Director each aircraft's registration number ("N" number), make, model, and the Aircraft owner's name and contact information.

(h) Access gates placed by an Off-Airport User which restrict access from the Off-Airport Property to the Airport shall include a sign stating no-trespassing, emergency contact information, the building address for City emergency personnel, and such other information as the City may require. The form and content of such sign shall be subject to the approval of the City.

(i)(1) *Lien.* The City shall have a continuing lien against each Off-Airport Property to secure payment of any delinquent annual Off-Airport Access fee (or portion thereof), as well as interest thereon, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the City may, as further evidence and notice of the lien, execute and record a document setting forth as to any Off-Airport Property, the amount of delinquent sums due the City at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the City to execute and record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

(2) *Enforcement of Lien.* The lien may be enforced by judicial or non-judicial foreclosure. Each owner of an Off-Airport Property, by accepting an Access Permit, grants to the City, whether or not it is so expressed in the Access Permit, a private power of non-judicial sale to be exercised in accordance with Chapter 51, Texas Property Code, as amended. The City may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the City's lien rights on behalf of the City, including the power of sale.

(3) *Subordination of Lien.* The lien provided for herein is subordinate to the lien of any recorded mortgage or deed of trust against an Off-Airport Property.

(4) *Effect of Conveyance.* An owner that conveys title to an Off-Airport Property shall not be liable for any delinquent annual Off-Airport Access fee that is attributable to the period after the conveyance of the Off-Airport Property. However, a conveyance of

title to an Off-Airport Property shall not affect the lien or relieve the owner that conveys the Off-Airport Property from personal liability for any delinquent annual Off-Airport Access fee attributable to the period prior to the date of the conveyance.

(5) *Effect of Foreclosure.* The foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will extinguish the lien described herein as to annual Off-Airport Access fee payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof; such foreclosure shall also cause the immediate termination of the Access Permit. However, a foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will not relieve such Off-Airport Property or owner thereof from liability for any annual Off-Airport Access fee payment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a mortgage deed of trust or a deed in lieu thereof shall not release the owner whose Off-Airport Property is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the owner's obligation to pay annual Off-Airport Access fees attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof.

(vi) *Cumulative Remedies.* This subsection is cumulative of any other remedies, methods of collection or security available to the City under this Division, the City Charter, or any other ordinances, laws, rules, regulations, standards, or permits of the City, the State, or the United States. This subsection does not affect the City's authority to refuse to furnish access to the Airport, to terminate an Access Permit, or to take any other action, when any delinquent annual Off-Airport Access fees exist.

### **Section 14-103. Security.**

(a) The City Manager may at any time require all pedestrian, vehicular and aviation access between the Off-Airport Property and the Airport to be controlled at all times using automated controlled-access devices, gate operators, closers with automatic locks or other such reliable devices, or any other means of affirmative control acceptable to the City Manager, that serves to continually safeguard the Airport from unauthorized access from the Off-Airport Property. The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport shall have the right to inspect the Off-Airport Property from time to time for conformance with this Division and/or the Access Permit.

(b) The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport is authorized by this Division to take appropriate action to ensure the Airport is safeguarded at all times, including the temporary override of gates, closers and locks of damaged or otherwise found inoperable gates and/or doors, or the placement of blockades or other types of barriers or fencing material as needed. Such safeguards, when taken, shall be clearly posted and not removed except as authorized by the City Manager or Airport Director.

(c) All safety and operational rules and regulations established by the FAA or TxDOT, by any City ordinance, rule, regulation, policy, standard, or permit, or by any other regulatory authority with jurisdiction over the Airport (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), shall be applicable to each Off-Airport Property.

**Section 14-104. Access Taxiways.**

(a) An Off-Airport User may, with the City Manager's approval and with any approval as may be required of the FAA, TxDOT or any other regulatory authority having jurisdiction over the Airport and subject to any and all laws, ordinances, rules, codes, regulations, policies, and standards of the City (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), construct, at the sole cost and expense of the Off-Airport User, an Access Taxiway to connect the Off-Airport Property to a nearby taxiway located within the Airport Public Area. The number, exact location and design specification of an Access Taxiway requested or constructed by an Off-Airport User shall be subject to the prior review and approval of the City Manager (and the FAA, TxDOT, and any other regulatory authority having jurisdiction over the Airport if so required), taking into consideration, among other things, operational safety and efficiency considerations and compatibility with the Addison Airport Master Plan as finally approved by the City from time to time. Plans and specifications for Access Taxiways shall be approved by the City Manager prior to construction, and Access Taxiways shall be designed and constructed to meet or exceed the requirements of the projected use for said Access Taxiways. An Off-Airport User may be required by the City to plat an Access Taxiway within the Off-Airport Property in accordance with law.

(b) Once constructed, inspected and accepted by the City, that portion of the Access Taxiway that lies within the Airport shall become the sole property of the City and shall immediately become a part of the Airport Public Area unless, at the sole discretion of the City Manager or Airport Director, public use and access is restricted for safety or operational reasons. Upon acceptance by the City, that portion of the Access Taxiway that lies within the Airport shall thereafter be policed, maintained and repaired by the City at the City's sole cost and expense, save and except any abnormal wear and tear or abuse of the Access Taxiway on the Airport evidenced by one or more Off-Airport Access Users who may, under said circumstances, be assessed by the City for all or a reasonable portion of the City's actual cost of repair(s).

(c) It shall be the responsibility of the Off-Airport User to maintain, repair or replace any portion of the Access Taxiway situated within the legal boundary of the respective Off-Airport Property including but not limited to the taxiway surface and subsurface, storm drainage, directional signs, lighting or other navigational aids, fencing, gates/doors and locking devices. If in the opinion of the City Manager or Airport Director, the portion of the Access Taxiway situated on the Off-Airport Property is unsafe or presents an operational or safety hazard to the Airport or any user of the Airport, the City Manager or Airport Director may, at their respective sole discretion, (i) take whatever commercially reasonable actions deems necessary to remedy the unsafe condition, and any and all costs thereof shall be reimbursed to the City by the Off-Airport User, or (ii) after giving written notice to the Off-Airport User of not less than fifteen (15) days, the City Manager may suspend Off-Airport Access from the Off-Airport Property until the unsafe condition is corrected to the satisfaction of the City.

**Section 14-105. Prohibited Uses.**

(a) The sale of fuel for aviation or other purposes and activities in connection therewith on, from or in connection with the use of an Off-Airport Property is strictly prohibited unless conducted directly by a licensed fueler holding a valid and current Addison Airport fuel-dispensing license issued by the City. No person, including, without limitation, an Off-Airport User, any person or entity related thereto, and any tenant, subtenant, or licensee thereof, shall be permitted or allowed to self-fuel or sell fuel (whether on or off the Airport) for aviation or any other purpose at or in connection with any Off-Airport Property.

(b) The use of an Off-Airport Property is subject to applicable zoning regulations and all other applicable laws, ordinances, codes, rules, regulations, and standards of the City and any other governmental entity having jurisdiction over the Off-Airport Property.

**Section 14-106. Access Permit.**

(a) *Application.* An Off-Airport User who desires access to the Airport from an Off-Airport Property shall make application (the "Application") to the Airport Director. In connection with the Application, an applicant shall provide to the Airport Director all such information regarding the Off-Airport Property as may be required by the Airport Director including, without limitation:

(1) a legal description of the Off-Airport Property and the total area of the Off-Airport Property calculated in square feet;

(2) a description of the desired or intended use of the Access Area (being either Recreational/Incidental Business Use or Commercial Aviation Use);

(3) if for Commercial Aviation Use, the applicant shall provide a description of the business services to be offered and details of any FAA certifications it will be operating under;

(4) a schedule of all aircraft to be stored or based at the Off-Airport Property by providing Airport Director each aircraft's registration number ("N" number), make, model and the Aircraft Owner's name and contact information (or any other information required by the Airport Director time from time);

(5) the names of all Affiliates and other individuals to be authorized under the Access Permit;

(6) evidence of financial responsibility as required under the Access Permit;  
and

(7) a security plan in form and content acceptable to the Airport Director.

(b) *Application Review and Approval.* The Airport Director shall review each Application for Off-Airport Access for its sufficiency under this Division. If the Application is complete (as determined by the Airport Director) and is consistent with this Division, the Airport Director shall deliver to the City Manager: (i) a copy of the Application, (ii) an Access Permit signed by the proposed Off-Airport User, (iii) acknowledgement of receipt of any fees due to the City in accordance with this Division or an Access Permit, and (iv) the Airport Director's written recommendation for the City Manager's consideration. The City Manager shall either approve or disapprove the Application.

(c) *Conditions for Issuing; Issuance.* If the Application for an Access Permit is complete and if the applicant has provided all information or materials as may be required by an Access Permit, and if the applicant is current on any and all City taxes, fees, charges, assessments, or fines and in compliance with all laws, ordinances, codes, rules, policies, and regulations of the City, then the City Manager may issue and execute an Access Permit on behalf of the City.

(d) *Contents of Access Permit; Periodic Recertification; Amendment.* The Access Permit shall identify the use and/or intended use of the Off-Airport Property (i.e., either a Recreational/Incidental Business Use or a Commercial Aeronautical Use), specify the size of the Off-Airport Property (for a Commercial Aviation Use only) and the fee to be paid in connection with any Off-Airport Access, and shall contain such other terms, conditions, and requirements as the City Manager or Airport Director may deem appropriate (including, without limitation, insurance and indemnity requirements, no assignment or other transfer without the City's prior consent, default, termination and remedies therefor, standards regarding environmental matters, authorized uses, standards and requirements regarding Addison special events, late charges and interest, and compliance with the terms and conditions of this Division). An Access Permit may not be sold, assigned, sublet, pledged, conveyed, or otherwise transferred without the prior written consent of the City. Periodically, the Airport Director may request an Off-Airport User to recertify the Off-Airport User's Access Permit by affirming the authorized users, registered aircraft, contact information, updated emergency and security plan, size of Off-Airport Property (for a Commercial Aviation Use only), permitted use or other terms and conditions of this Division.

(e) *Revocation; Access Prevented; Reinstatement.*

(i) The City Manager may revoke, cancel or terminate the Access Permit and access from an Off-Airport Property of any Off-Airport User who either (1) fails to pay the applicable fee, or fails to comply with any provision of the Access Permit, this Division, and any applicable laws, rules, codes, standards, regulations, policies, or permits, or (2) fails to pay prior to delinquency the lawfully assessed and levied City ad valorem taxes on the applicable Off-Airport Property, or (3) as otherwise set forth in the Access Permit.

(ii) If access from an Off-Airport Property to the Airport is revoked, canceled, or terminated, the City shall secure the Airport by erecting a fence or other barrier to prevent access to the Airport from the Off-Airport Property. If a fence or other barrier is erected, the affected Off-Airport Owner shall, prior to and as a condition of reinstatement of access from the Off-Airport Property to the Airport, reimburse the City for all costs (including, without limitation, attorney's fees) incurred by or on behalf of the City to collect any amounts due for access, to erect and/or remove a fence or other barrier, and other applicable costs.

(iii) Any revoked, canceled, or terminated Access Permit and access to the Airport from an Off-Airport Property may be reinstated only after the City Manager has determined that sufficient extenuating circumstances exist to merit consideration for reinstatement, and upon payment of any outstanding fees or costs plus interest as may be required, the correction of any non-compliance, and/or the payment of any such taxes

plus all penalties and interest, as applicable. Access to the Airport shall be reinstated within 72 hours following the City Manager's determination of the same.

(f) *Term.* Subject to the provisions, terms and conditions of this Division and an Access Permit, an Access Permit shall be issued for a term of ten (10) years (the "Initial Term"). At the end of the Initial Term, an Access Permit shall be automatically renewed for an additional period of ten (10) years, and at the end of the second ten (10) year period shall be automatically renewed for an additional period of ten (10) years (each such renewal term of ten (10) years is a "Renewal Term"), for a total term of thirty (30) years. Thereafter, an Access Permit may be renewed in accordance with then applicable laws, ordinances, rules, standards and regulations.

(g) *Renewals/Extensions of Access Permit.* A renewal and/or extension of an Access Permit may be considered (but not necessarily authorized or granted, which shall be in the City's sole discretion) by the City as long as: (i) the City will still own and control the Airport during the modified term; (ii) the continuation of the Off-Airport Access is, in the City's sole discretion, desirable for the City or the Airport; (ii.) is consistent with the City's and/or Airport purposes and objectives; (iii) no more than fifteen (15) years remain under the prevailing term and such renewal or extension does not exceed any duration of term authorized by law; (iv) is in compliance and accordance with the terms, conditions, and standards set forth in this Division. All renewals and/or extensions shall be subject to the same conditions provided herein for issuance of an Access Permit, as the same may be amended or modified in whole or in part from time to time.

(h) *Prohibition Against Unpermitted Access; Penalty.* It shall be unlawful for any person to access the Airport Property from an Off-Airport Property unless such person holds and is a party to a valid Access Permit or is accessing the Airport or the Off-Airport Property for a purpose which is authorized by the Access Permit for the said Off-Airport Property. A violation of this provision or any other provision of this Division constitutes a misdemeanor punishable by fine or State or Federal law, and/or may result in revocation, cancellation or termination of the Access Permit.

#### **Section 14-107. Fee Calculation; Time of Payment; Penalty for Late Payment.**

(a) *Determination of Airport Public Area Maintenance Rate.* On or before December 1, 2006 and on or before December 1 of every other year thereafter (e.g., 2008, 2010, etc.), the Airport Director shall determine the Airport Public Area Maintenance Rate.:

(b) *Adjustment to the Airport Public Area Maintenance Rate.* In order to, among other things, promote the economic development and use of the Airport and the development of aeronautical properties adjacent to the Airport and for other proper and beneficial purposes, in the discretion of the City the then applicable Airport Public Area Maintenance Rate may be adjusted by reducing the same in an amount determined appropriate by the City (the "Adjusted Airport Public Area Maintenance Rate"). The Adjusted Airport Public Area Maintenance Rate shall become effective on January 1 of the year next following such determination, and shall be used to establish the Access Fee for any new or extended Access Permit issued while it is in effect.

(c) *Access Fee.*

(i) *Commercial Aviation Use.* For each Off-Airport Property where the stated aviation use is a Commercial Aviation Use, the Access Fee shall be calculated as follows (the "Commercial Aviation Use Access Fee Formula"):

Adjusted Airport Public Area Maintenance Rate (then applicable)

x (times)

Off-Airport Property (gross land area in square feet)

=

Access Fee for Commercial Aviation Use

(ii) *Recreational/Incidental Business Use.* For each Off-Airport Property where the stated use is a Recreational/Incidental Business Use, giving due regard and consideration to the Airport Public Area and the Airport Public Area Expenses, the Access Fee shall be calculated at a rate and/or set in an amount which is smaller than the rate and/or amount of the fee for a Commercial Aviation Use.

Example (Commercial Aviation Use):

Total Airport Expenses (Airport Enterprise Fund)	\$3,851,878
Less Non-Public Airport Facilities Expenses (including cost allocations provided for in sub-paragraph (ii) of the definition of Airport Public Area Expenses set forth in this Division)	(\$1,273,527)
Less Public Revenue offset	(\$ 746,293)
Plus 5 year CIP Reserve Allowance	<u>\$ 871,808</u>
<i>Airport Public Area Expenses</i>	\$2,703,866
Square Footage of all Non-Public Airport Facilities and Total Off-Airport Properties	9,232,967 Sq. Ft.
<i>Airport Public Area Maintenance Rate (Airport Public Area Expenses ÷ square footage of all Non-Public Airport Facilities and Total Off-Airport Properties)</i>	\$0.29/Sq. Ft.
<i>Adjusted Airport Public Area Maintenance</i>	\$ .08/Sq. Ft.

*Rate*

*Square footage of specific Off-Airport Property  
(stated aviation use is a Commercial Aviation Use) 20,000 square feet*

*Access Fee for Off-Airport Property (paid annually, subject to adjustment) 20,000 square feet x \$0.08 = \$1,600.00*

(d) *Payment.* The initial Access Fee shall be due and payable in accordance with Section 14-106(b), above (but in any event, not later than the time of issuance of an Access Permit); Airport access shall not be permitted prior to the issuance of the Access Permit and until the said fee is paid. Thereafter, the Access Fee shall be paid in advance on or before the following payment date(s): if an Access Fee is less than \$5,000.00 annually, payment of the Access Fee shall be made on or before January 1 of each year; if an Access Fee is \$5,000 or more annually, payment may be made in not fewer than two equal installments, each installment being due on or before January 1 and July 1 of each year. A penalty may be assessed for a late payment in addition to the City's cost of collecting any such delinquent sum.

(e) *Modification of Size of Off-Airport Property.* If the total square footage of an Off-Airport Property (having as its stated aviation use a Commercial Aviation Use) is legally modified (including any platting or re-platting as may required) (i.e., the legal description has been changed or altered), the Off-Airport User owning the Off-Airport Property shall promptly report in writing such modification to the City. Upon such notice, the Access Permit shall be amended to reflect the modified land area and applicable Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

(f) *Modification of Off-Airport Use.* If an Access Permit is issued for an Off-Airport Property having a Commercial Aviation Use as its stated aviation use, and the stated aviation use is subsequently changed to a Recreational/Incidental Business Use, the Off-Airport User owning the Off-Airport Property shall report the same in writing to the Airport Director, and the Airport Director shall investigate the report and if the Airport Director concludes that such use has in fact changed, the Access Permit shall be amended to reflect the change in use and the modification of the Access Fee, if any, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

If an Off-Airport User desires to change its Recreational/Incidental Business Use Access Permit to a Commercial Aviation Use, the Off-Airport User shall submit a written request to the Airport Director, which request shall be considered and processed in accordance with and as provided for in Section 14-106. If the City approves the requested change, the Access Permit shall be amended to reflect the change in use and an adjustment to the Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate

(g) *Adjustment to Access Fee.*

(i) Commencing on January 1 of the second year next following the year of the effective date of an Access Permit and every two (2) years thereafter (hereinafter referred

to as the "Adjustment Date"), the Access Fee shall be adjusted as follows (a "CPI Adjustment"):

(A) The Access Fee 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 on January 1 of the year in which an Access Permit is effective. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

(B) Beginning with the calendar year of the then applicable Adjustment Date, the Access Fee shall be adjusted so that it equals the product of the Access Fee multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such monthly rent ever be decreased below the initial amount of the Access Fee.

(C) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible (as reasonably determined by the City) shall be substituted therefor.

(ii) An Access Fee shall be further adjusted as follows: At or about the beginning of each Renewal Term (as defined in Section 14-106(f), above) the Access Fee shall be determined by recalculating the same in accordance with the provisions of this Division (e.g., for a Commercial Aviation Use, the Access Fee shall be recalculated pursuant to the Commercial Aviation Use Access Fee Formula). Such Access Fee shall then be subject thereafter to CPI Adjustment.

(h) *Initial Access Fees.* Initial Access Fees are as follows:

(i) For December 1, 2006, the Airport Director has determined the Airport Public Area Maintenance Rate to be \$0.29 per square foot. The Adjusted Airport Public Area Maintenance Rate for the first two year period, commencing January 1, 2007 is hereby set at \$0.08 per square foot. Access Fees for Commercial Aviation Uses for such period shall be determined in accordance with the Commercial Aviation Use Access Fee Formula.

(ii) For each Off-Airport Property where the aviation use is a Recreational/Incidental Business Use, the Access Fee shall be Seven Hundred Fifty and No/100 Dollars (\$750.00).

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION) OF THE CODE OF ORDINANCES OF THE CITY BY AMENDING DIVISION 3 (OFF-AIRPORT ACCESS TO AIRPORT) OF ARTICLE III (MUNICIPAL AIRPORT) THEREOF BY AMENDING SECTION 14-106(D) (REGARDING CONTENTS OF AN ACCESS PERMIT, INCLUDING ASSIGNMENT PROVISIONS), SECTION 14-106(F) (RELATING TO THE TERM OF AN ACCESS PERMIT), AND SECTION 14-107(G)(II) (REGARDING ADJUSTMENT TO THE ACCESS FEE); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1. Amendment.** Chapter 14 (Aviation) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended by amending Division 3 (Off-Airport Access to Airport) to Article III (Municipal Airport) of Chapter 14 in the following particulars, and all other parts of the said Code are not amended but are ratified and affirmed:

A. Section 14-106 (Access Permit) of Chapter 14 of the Code is hereby amended by amending subsections (d) and (f) thereof to read as follows (additions are underlined; deletions are ~~struck through~~):

(d) *Contents of Access Permit; Periodic Recertification; Amendment.* The Access Permit shall identify the use and/or intended use of the Off-Airport Property (i.e., either a Recreational/Incidental Business Use or a Commercial Aeronautical Use), specify the size of the Off-Airport Property (for a Commercial Aviation Use only) and the fee to be paid in connection with any Off-Airport Access, and shall contain such other terms, conditions, and requirements as the City Manager or Airport Director may deem appropriate (including, without limitation, insurance and indemnity requirements, no assignment or other transfer without the City's prior consent (not to be unreasonably withheld, and not to be withheld on the basis of a lawful use of the Off-Airport Property existing as of \_\_\_\_\_, 2007), default, termination and remedies therefor, standards regarding environmental matters, authorized uses, standards and requirements regarding Addison special events, late charges and interest, and compliance with the terms and conditions of this Division). An Access Permit may not be sold, assigned, sublet, pledged, conveyed, or otherwise transferred without the prior written consent of the City. Periodically, the Airport Director may request an Off-Airport User to recertify the Off-Airport User's Access Permit by affirming the authorized users, registered aircraft, contact information, updated emergency and security plan, size of Off-Airport Property

(for a Commercial Aviation Use only), permitted use or other terms and conditions of this Division.

(f) *Term.* Subject to the provisions, terms and conditions of this Division and an Access Permit, an Access Permit shall be issued for a term of ~~twenty-five~~ten (25~~40~~) years (the "Initial Term"). At the end of the Initial Term, an Access Permit shall be automatically renewed for an additional period of ~~fifteen~~ten (15~~40~~) years, ~~and at the end of the second ten (10) year period shall be automatically renewed for an additional period of ten (10) years (the each such renewal term of ten (10) years is a "Renewal Term")~~, for a ~~total term of thirty (30) years~~. Thereafter, an Access Permit may be renewed in accordance with then applicable laws, ordinances, rules, standards and regulations.

B. Section 14-107 (Fee Calculation; Time of Payment; Penalty for Late Payment) of Chapter 14 of the Code is hereby amended by amending subparagraph (ii) of subsection (g) (Adjustment to Access Fee) thereof to read as follows (additions are underlined; deletions are ~~struck through~~):

(ii) An Access Fee shall be further adjusted as follows: At or about the beginning of ~~the automatic each~~ Renewal Term (as defined in Section 14-106(f), above) and at or about the beginning of any additional renewals thereafter as may be approved by the City, the Access Fee shall be determined by recalculating the same in accordance with the provisions of this Division (e.g., for a Commercial Aviation Use, the Access Fee shall be recalculated pursuant to the Commercial Aviation Use Access Fee Formula). Such Access Fee shall then be subject thereafter to the CPI Adjustment as set forth in and in accordance with subsection (g)(i) of this Section.

**Section 2. Savings.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

**Section 3 Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 4. Effective Date.** This Ordinance shall become effective from and after its date of passage and approval and publication as may be required by law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

APPROVED AS TO FORM:

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

STATE OF TEXAS           §  
   §  
 COUNTY OF DALLAS       §

**ADDISON AIRPORT ACCESS PERMIT**  
 (Permit No. 7500-\_\_\_\_)

**THIS** Addison Airport Access Permit ("Permit") is issued by the Town of Addison, Texas (the "City") to \_\_\_\_\_ ("Off-Airport User"), effective as of the Effective Date as set forth herein.

**Off-Airport User Contact Information And Other Salient Terms:**

<b>Name of Off-Airport User:</b>	
Off-Airport Property Legal Address: <i>(inc .Lot &amp; Block description if available)</i>	
Off-Airport User's Notice Address: <i>(If different from the Off-Airport Property Address)</i>	
Off-Airport User's Telephone Number:	
Off-Airport User's Telecopy (fax) Number:	
Off-Airport User's E-Mail Address:	
Off-Airport User's Stated Use:	
Gross Land Area: <i>(for Commercial Aviation Use only)</i>	
Access Fee Amount <i>(for Initial Term):</i>	
Effective Date:	

**WITNESSETH:**

**WHEREAS**, the City is the owner of the Addison Airport (the "Airport"); and

**WHEREAS**, the Airport is operated and managed for the City by Washington Staubach Addison Airport Venture, a Texas joint venture ("Airport Manager"); and

**WHEREAS**, Off-Airport User is the sole owner of certain real property described and depicted in Exhibit A attached hereto and incorporated herein (the "Off-Airport Property"), which property has a common boundary with the Airport or with an Access Taxiway (as defined in Chapter 14, Article III, Division 3 of the City's Code of Ordinances, adopted by Ordinance No. \_\_\_\_\_ of the City (the said Chapter 14, Article III, Division 3 of the City's Code of Ordinances, and as the same as may be amended or superseded, being referred to herein as the "Access Ordinance")); and

**WHEREAS**, Off-Airport User uses or intends to use the Off-Airport Property for one of the following (the "Stated Use"):

*Check only one:*

**Commercial Aviation Use** (as defined in the Access Ordinance)

**Recreational/Incidental Business Use** (as defined in the Access Ordinance)

and, in accordance with the Access Ordinance, has applied for a permit to access the Airport Public Area (as defined in the Access Ordinance) from the Off-Airport Property in connection with such use.

**NOW, THEREFORE**, for and in consideration of the premises and mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto agree as follows:

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

2. Definitions. For the purposes of this Permit, the following words and terms shall have the same meanings as those terms defined in the Access Ordinance: "Access Taxiway", "Aircraft Owner", "Airport", "Airport Public Area", "Adjusted Airport Public Area Maintenance Rate", "Access Fee", "City", "City Manager", "Commercial Aviation Use", "Commercial Aviation Use Access Fee Formula", "Off-Airport Access", and "Recreational/Incidental Business Use".

3. Access. Subject to the terms and conditions contained in this Permit, Off-Airport User is hereby permitted to access and use, solely from the Off-Airport Property, the Airport Public Area for aviation purposes. Off-Airport User's access to and use of the Airport Public Area shall be in accordance with and shall at all times conform to and comply with all of the terms and conditions of this Permit, with all applicable ordinances, laws, rules, regulations, orders, directives, permits, plans or policies whether in effect as of the Effective Date or as may be hereafter adopted, modified, or amended, whether federal, state or local (including, without limitation, the Access Ordinance, and any and all rules or regulations of the Federal Aviation Administration (FAA) and the Texas Department of Transportation (TxDOT), or any successor entities thereto), with any and all requirements, conditions, policies, permits, standards, rules, or directives in connection with or which are a part of any Airport grant or funding or any grant agreements or grant assurances (whether in effect as of the Effective Date or as hereafter agreed to, adopted, issued, modified, established, or imposed), and with aircraft weight standards and limitations established at the Airport.

4. Access from Off-Airport Property Only. No use of or access to the Airport shall be permitted pursuant to this Permit except that which originates from the Off-Airport Property as depicted and described in Exhibit A attached hereto and incorporated herein.

5. Term.

A. *Initial Term.* The term of this Permit shall commence on the Effective Date (herein so called) set forth above under "Off-Airport User Contact Information And Other Salient Terms" and, unless otherwise terminated, shall continue in effect for a period of ten (10) years (the "Initial Term")

B. *Renewal Terms.* At the end of the Initial Term, provided there is not then an uncured default of this Permit by Off-Airport User, this Permit shall be automatically renewed without further action of either the City or the Off-Airport User (for purposes of this Permit, the City and the Off-Airport User are sometimes referred to separately as a "party" and together as the "parties") for an additional period of ten (10) years; and at the end of the second ten (10) year period, provided there is not then an uncured default of this Permit by Off-Airport User, this Permit shall again be automatically renewed without further action of either party for an additional period of ten (10) years (each such renewal term of ten (10) years being a "Renewal Term" and the commencement date of each Renewal Term being a "Renewal Date"); for a total possible term of thirty (30) years.

C. Off-Airport User hereby acknowledges and agrees that Off-Airport User has no right(s) to use the Airport from the Off-Airport Property except as expressly set forth herein and that unless this Permit is extended by the written mutual agreement of the parties, all such rights shall terminate as of the expiration or termination of this Permit.

6. Access Fee.

As consideration for Off-Airport Access to the Airport Public Area from the Off-Airport Property as set forth herein, Off-Airport User agrees to pay to the City an annual fee (the "Access Fee") as follows:

A. If the Stated Use of the Off-Airport Property as set forth above is a **Recreational/Incidental Business Use:**

- (1) The Access Fee during the Initial Term shall be the prevailing rate or amount determined by the City for a Recreational/Incidental Business Use pursuant to the Access Ordinance. The Access Fee for the Initial Term is the amount first given above under "Off-Airport User Contact Information And Other Salient Terms", which amount is subject to the consumer price index adjustment as set forth in subsection E. of this Section ("CPI Adjustment").
- (2) At the beginning of each Renewal Term, the annual Access Fee shall be adjusted so that it equals the then current Access Fee for a Recreational/Incidental Business Use as determined by the City from time to time in accordance with the Access Ordinance, which Access Fee is subject during the Renewal Term to the CPI Adjustment as set forth herein.

B. If the Stated Use of the Off Airport Property as set forth above is a **Commercial Aviation Use:**

- (1) The Access Fee shall be determined by using and applying the Commercial Aviation Use Access Fee Formula, as follows:

$$\begin{aligned} & \text{Adjusted Airport Public Area Maintenance Rate (then current)} \\ & \qquad \qquad \qquad \times (\text{times}) \\ & \text{Off-Airport Property (gross land area in square feet)} \\ & \qquad \qquad \qquad = \\ & \text{Access Fee} \end{aligned}$$

- (2) The Access Fee for the Initial Term is the amount first given above under "Off-Airport User Contact Information And Other Salient Terms." At the beginning of each Renewal Term, the Access Fee shall be adjusted and determined by using and applying the Commercial Aviation Use Access Fee Formula
- (3) The Access Fee for the Initial Term and each Renewal Term is subject to a CPI Adjustment as set forth herein.
- (4) If the Off-Airport Property's gross square footage is modified in accordance with law, the Off-Airport User owning the Off-Airport Property shall promptly give written notice thereof to the City. Upon such notice and confirmation of such modification by the City, the Access Permit shall be amended to reflect the modified land area and applicable Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

C. The annual Access Fee shall be paid by personal or corporate check or money order (cash cannot be accepted) in advance by Off-Airport User, made payable to the Town of Addison in care of the Airport Manager at the address set forth below. Payments of the Access Fee shall be made:

- (1) in a lump sum (on or before January 1 of each year) if the annual Access Fee is less than \$5,000.00; or
- (2) no more frequently than semi-annually (on January 1 and July 1 of each year) in two (2) equal installments (each such installment being equal to 1/2 of the full annual Access Fee) if the annual Access Fee is \$5,000.00 or more

D. If the Effective Date is other than January 1, the Access Fee payment shall be a ratable amount of the Access Fee for the first year (or one-half of the first year, if semi-annual payments are applicable) of this Permit determined by multiplying such Access Fee times a fraction, the numerator of which is the number of days remaining in the calendar year (or one-half of the calendar year, if semi-annual payments are applicable) of the Effective Date and the denominator of which is 365 (or 183, if semi-annual payments are applicable). In the final year of this Permit, the final Access Fee payment shall be a ratable amount of the then current annual Access Fee times a fraction, the numerator of which is the number of days remaining for this Permit in the final calendar year (or one-half of the calendar year, if semi-annual payments are applicable) and the denominator of which is 365 (or 183, if semi-annual payments are applicable).

E. Commencing on the second January 1 next following (i) the Effective Date or (ii) the then applicable Renewal Date, as the case may be, and on January 1 every two years thereafter (hereinafter referred to as the "Adjustment Date"), the annual Access Fee 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 ("CPI Adjustment"). For purposes hereof, the basic index ("Basic Index") is the Consumer Price Index existing on January 1 of the year of the Effective Date or of the then applicable Renewal Date, as the case may be. The current index ("Current Index") is the most current Consumer Price Index already published by the U.S. Department of Labor, Bureau of Labor Statistics as of the then applicable Adjustment Date. The adjustment is made as follows:

Beginning with the calendar year of the then applicable Adjustment Date, the Access Fee shall be adjusted so that it equals the product of the Access Fee multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall the Access Fee ever be decreased below the initial amount of the Access Fee for the Initial Term or Renewal Term, as applicable.

In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as reasonably determined by the City) shall be substituted therefor.

F. If the Stated Use of the Off-Airport Property is a Commercial Aviation Use, and if the same is changed to a Recreational/Incidental Business Use, Off-Airport User shall report the same in writing to the Airport Director, and the Airport Director shall investigate the report; if the Airport Director concludes that such use has in fact changed, this Permit shall be amended to reflect the change in use and the modification of the Access Fee, if any, and a pro-rata adjustment to the Access Fee for the year of such change shall be made as appropriate.

If the Stated Use of the Off-Airport Property is a Recreational/Incidental Business Use, and if the Off-Airport User desires to change the same to a Commercial Aviation Use, the Off-Airport User shall submit a written request to the Airport Director, which request shall be considered and processed in accordance with and as provided for in the Access Ordinance. If the City approves the requested change, this Permit shall be amended to reflect the change in use and an adjustment to the Access Fee, and a pro-rata adjustment to the Access Fee for the year of such change shall be made as appropriate.

7. Use of Off-Airport Property and Airport.

A. The use of the Off-Airport Property and the Airport shall be in accordance with and subject to the terms, conditions, and provisions of this Permit and with and subject to all ordinances (including, without limitation, the Access Ordinance), laws, rules, orders, directives, regulations, standards, plans, policies and permits of the City, the FAA, TxDOT, and any government (whether federal, state, or local) entity, agency, department, commission or board having jurisdiction over, at, or in connection with the Airport, as the same may exist on the Effective Date or as may hereafter be amended, modified, superseded, established, created, or enacted.

B. Off-Airport User shall not keep anything on or within the Off-Airport Property, nor shall Off-Airport User permit any portion of the Off-Airport Property to be occupied or used, for any purpose in violation of any applicable law, rule, permit, policy, standard, order, or regulation, or which is deemed by the City to be extra-hazardous, or which increases the insurance premium costs or invalidates any insurance policies carried on or at the Airport by the City or the Airport Manager.

8. Assignment. This Permit and any of the rights, duties, or obligations of the Off-Airport User hereunder may not be sold, assigned, sublet, pledged, conveyed, or otherwise transferred (together, "assign" or "Assignment") by any means whatsoever, and Off-Airport User shall have no right to assign this Permit or any of such rights, duties or obligations, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such Assignment without the prior written approval of the City is void. In the event of any Assignment, Off-Airport User shall not convey any of such rights, duties or obligations hereunder without first obtaining a written agreement from each person or party to whom an Assignment is made whereby each such person or party agrees to be bound by the terms and provisions of this Permit. Any such person or party to whom an Assignment is made shall be required to comply with all of the terms and conditions of this Permit.

9. Fuel.

A. The sale of fuel for aviation or other purposes and activities in connection therewith on, from, or in connection with the use of the Off-Airport Property is prohibited, and the sale of fuel for aviation purposes shall occur only on the Airport. No business offering to the general public the sale of fuel shall operate on the Off-Airport Property. No person, including an Off-Airport User, shall be permitted or allowed to self-fuel or sell fuel (whether on or off the Airport) for aviation or any other purpose at or in connection with the Off-Airport Property. No automotive or aviation fuel or other volatile gases or liquids of any kind shall be delivered to, stored upon or sold or conveyed from the Off-Airport Property, or any part thereof, or sold for use in any aircraft, automobile or other equipment operated from or on the Off-Airport Property. Notwithstanding the above, a person or entity authorized by the City to sell fuel at Addison Airport to the public may be permitted to sell fuel and dispense such fuel solely into aircraft located on the Off-Airport Property.

B. Off-Airport User 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 Off-Airport User, its agents, employees, invitees, independent contractors, or subtenants) on the Airport any 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 any federal, state, county, regional, local or other governmental authority, laws, rules or regulation, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants or users of the Airport or the public ("Hazardous Materials"). Off-Airport User shall comply in all respects and at all times with any and all environmental laws, rules, regulations and/or policies (whether federal, state or local) affecting or applicable to the Off-Airport Property, and shall provide as often as may be required by the City (and in accordance with any applicable requirements) a storm water retention plan with respect to the Off-Airport Property and comply at all times with such plan.

10. Aircraft; Noise Abatement; Inspection of Off-Airport Property. Off-Airport User, simultaneously with the execution of this Permit, shall provide to the Airport Manager the following information regarding any aircraft (whether belonging to Off-Airport User or otherwise) stored or located on the Off-Airport Property:

- (i) aircraft owner and owner's mailing address,
- (ii) the lessee of the aircraft and lessee's address (if any), and
- (iii) the make, model, aircraft type and "N" number,

and such information shall be kept current at all times. Off-Airport User shall comply with noise abatement standards at the Airport and shall notify any aircraft operator using the Off-Airport Property of such standards. For ad valorem tax purposes and as may be required by law, any aircraft stored on the Off-Airport Property shall be reported to the appropriate governmental authority. The City shall have the right to enter the Off-Airport Property from time to time to inspect the same for conformance with this Permit, for ongoing airport security required under Section 14-103 of the Access Ordinance, or to perform other regulatory requirements.

11. Contiguous Property. Property located adjacent and contiguous to the Off-Airport Property in which Off-Airport User has an interest shall not be used in conjunction or in connection with the Off-Airport Property so as to constitute a violation of the terms hereof. By way of example, no aviation fuel shall be stored upon any such property for the purpose of using such fuel for aircraft located or stored upon the Off-Airport Property.

12. Airport Use; Compliance with Laws, Grant Agreements.

A. No use of the Airport shall be permitted pursuant to this Permit except as specifically set forth in this Permit. Off-Airport User agrees and obligates itself to abide by, and this Permit is subject to, all of the ordinances, laws, rules, orders, regulations, standards, directives, and policies covering the operation and use of the Airport, including, but not limited to, such ordinances, laws, rules, orders, regulations, standards, directives, and policies as have been or may be promulgated or adopted by the City (including, without limitation, the Access Ordinance), the FAA, TxDOT, or by any other governmental authority having jurisdiction over or in connection with the Airport now or hereafter.

B. This Permit is and shall be subject to and conform and comply with any and all requirements, conditions, policies, standards, rules, or directives in connection with or which are a part of any Airport grant or funding, or any grant agreements or grant assurances (whether in effect as of the Effective Date or as hereafter agreed to, adopted, issued, modified, established, or imposed).

C. THIS PERMIT IS AND SHALL BE SUBJECT TO THE INITIAL AND ONGOING CONSENT AND OVERSIGHT OF THE FAA, TXDOT, AND ANY OTHER GOVERNMENT ENTITY, QUASI-GOVERNMENT ENTITY, OR REGULATORY AUTHORITY OR AGENCY HAVING JURISDICTION OVER THE AIRPORT AS MAY BE REQUIRED OR AS DETERMINED TO BE NECESSARY BY THE CITY IN THE CITY'S SOLE DISCRETION. IF ANY SUCH ENTITY OR REGULATORY AGENCY FORMALLY OBJECTS TO THIS PERMIT OR ITS CONTINUANCE, THIS PERMIT SHALL BE NULL

AND VOID AND OFF-AIRPORT USER SHALL HAVE NO RIGHT TO ACCESS THE AIRPORT AS SET FORTH HEREIN.

13. Construction, Reconstruction. During any period of construction on the Off-Airport Property (whether new construction or reconstruction in the event any improvement located on the Off-Airport Property is damaged or destroyed), the Airport Manager may require that the Off-Airport User erect a fence or other barrier on the Off-Airport Property to prevent unauthorized access to the Airport from that area under construction or reconstruction.

14. Termination; Reinstatement; Additional Remedies.

A. Off-Airport User may terminate this Permit upon giving the City at least thirty (30) days advance written notice of its desire and intent to terminate the Permit. Such written notice shall (1) set forth a specific effective date when all aviation operations on the Off-Airport Property will cease, and (2) provide a forwarding address where any prepaid but unearned Access Fee amounts may be refunded. Upon the termination of this Permit under this sub-section, the City may, at its sole discretion, erect or place a fence or other barrier to prevent unauthorized access to the Airport from the Off-Airport Property.

B. The City may in its sole discretion terminate, cancel and revoke this Permit upon the occurrence of any one or more of the following (which shall be events of default of this Permit):

- (1) if Off-Airport User fails to timely pay an annual Access Fee (or any installment thereof); or
- (2) if Off-Airport User fails to maintain and keep in full force and effect any insurance required hereunder; or
- (3) if Off-Airport User or any guarantor of Off-Airport User's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Off-Airport User or any guarantor of Off-Airport User's obligations hereunder and the same is not dismissed within sixty (60) days; or
- (4) if Off-Airport User or any guarantor of Off-Airport User's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or
- (5) if Off-Airport User shall do or permit to be done any act which results in a lien being filed against any property at the Airport; or
- (6) upon the liquidation, termination, dissolution or (if Off-Airport User is a natural person) the death of Off-Airport User or any guarantor of Off-Airport User's obligations hereunder; or

- (7) if Off-Airport User (or any third party using the Off-Airport Property) fails to comply with any provision of this Permit, other than those specified in subparagraphs A.(1) through A.(6) of this subsection A., and such failure is not cured within 15 days after written notice thereof to Off-Airport User; or
- (8) if Off-Airport User fails to pay prior to delinquency the lawfully assessed and levied ad valorem taxes of the City on the Off-Airport Property.

C. In addition to the above, this Permit shall immediately terminate in the event the Addison Airport is no longer used for aviation purposes.

D. The City shall not be liable to Off-Airport User for any damages of any kind or nature whatsoever which may occur as a result of any such termination, cancellation or revocation.

E. If the City terminates, cancels or revokes this Permit for any of reason set forth herein, the City may, at its sole discretion, erect or place a fence or other barrier to prevent unauthorized access to the Airport from the Off-Airport Property. Off-Airport User agrees to reimburse the City for all reasonable costs (including attorney's fees) incurred to collect any amounts due under this Permit or to erect and remove a fence or other barrier as described above.

F. If this Permit is terminated, canceled, or revoked, this Permit may be reinstated only after the Airport Manager has determined that sufficient extenuating circumstances exist to merit consideration for reinstatement and upon payment of any outstanding fees plus interest as may be required herein and/or the correction of any non-compliance. If a fence or other barrier prohibiting access to the Airport from the Off-Airport Property has been erected or placed by the City, Off-Airport User shall, as a condition precedent to obtaining access to the Airport, reimburse the City for all costs incurred by the City in erecting or placing and in removing the fence or other barrier.

G. In addition to the other remedies provided in this Permit, the City shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation, of any of the provisions of this Permit, or to a decree compelling performance of any other provisions of this Permit, or to any other remedy allowed at law, in equity, or otherwise.

H. The City shall have a continuing lien against the Off-Airport Property to secure payment of any delinquent annual Access Fee (or portion thereof), as well as interest thereon, late fees and costs of collection, including, without limitation, court costs and attorneys' fees as provided for in the Access Ordinance. Although no further action is required to create or perfect the lien, the City may, as further evidence and notice of the lien, execute and record a document setting forth, as to the Off-Airport Property, the existence of this Permit and the Access Ordinance, the lien, and the amount of any delinquent sums hereunder due the City. The terms and provisions of the Access Ordinance regarding the said lien are incorporated herein and made a part hereof.

I. Notwithstanding any other remedy or provision set forth in this Permit: (i) all rights and remedies of the City herein or existing at law, in equity, or otherwise are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the

exercise of any other; (ii) Off-Airport User agrees that acceptance of full or partial payments of the annual Access Fee by the City after notice of termination, cancellation or revocation will not constitute a waiver of any default unless the City agrees to a waiver in writing, nor affect any legal proceedings taken or to be taken by the City except to reduce Off-Airport User's obligation to the City by the amount of such payment; and (iii) waiver by the City of any default or breach of this Permit by Off-Airport User of any provision of this Permit shall not bar the City thereafter from requiring prompt performance by Off-Airport User of the obligations of this Permit, nor shall the City be barred thereafter from immediate exercise of any of the City's rights or remedies in case of continuing or subsequent default or breach by Off-Airport User.

15. Insurance. While this Permit is in effect and in connection with the matters set forth in this Permit, Off-Airport User shall maintain at Off-Airport User's sole cost and expense insurance as follows:

A. Hangarkeepers Legal Liability insurance, with minimum limits of \$1,000,000 per-occurrence is required if Off-Airport User is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Off-Airport User is otherwise involved in any operation in which Off-Airport User has care, custody, or control of an aircraft that belongs to a third-party; and

B. 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 the City, but in any event not less than \$1,000,000 each occurrence (applies to the ownership, operation, use, maintenance, loading, or unloading of any owned aircraft owned by Off-Airport User and the operation, use, maintenance, loading, or unloading of any non-owned aircraft by Off-Airport User).

The above policies shall be endorsed to provide the following, as applicable: (i) in all liability policies, name as additional insureds the Town of Addison, Texas and Washington Staubach Addison Airport Venture and their respective officials, officers, employees, and agents; (ii) may maintain reasonable and customary deductibles acceptable to the Town of Addison, Texas; (iii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted under the permit, and that insurance applies separately to each insured against whom claim is made or suit is brought; (iv) all liability policies shall contain no cross liability exclusions or insured versus insured restrictions; and (v) contain a waiver of subrogation in favor of the Town of Addison, Texas and Washington Staubach Addison Airport Venture in all liability policies.

All insurance policies shall be issued by an insurance company authorized to do business in Texas and satisfactory to the City and in the standard form approved by the Texas Department of Insurance, and shall be endorsed to provide for at least 30 days advance written notice to the City of a material change in, cancellation, or non-renewal of a policy. Certificates of insurance, satisfactory to the City, evidencing all coverage above, shall be furnished to the City not later than sixty (60) days after the Effective Date, with complete copies of policies furnished to the City upon the City's request. The City reserves the right in its sole discretion to review and revise from time to time the types of insurance and limits of liability required herein.

16. Indemnity; Non-Liability.

- A. (1) OFF-AIRPORT USER AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND WASHINGTON STAUBACH ADDISON AIRPORT VENTURE, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (TOGETHER, "INDEMNIFIED PERSON") FROM AND AGAINST ANY AND ALL SUITS, CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) OFF-AIRPORT USER'S PERFORMANCE OF THIS PERMIT, (B) THE USE OF THE OFF-AIRPORT PROPERTY AND THE AIRPORT IN CONNECTION WITH THIS PERMIT BY OFF-AIRPORT USER OR BY ANY OWNER, OFFICER, PARTNER, SHAREHOLDER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, TENANT, SUBTENANT, LICENSEE, GUEST, INVITEE, OR CONCESSIONAIRE OF OFF-AIRPORT USER, OR ANY OTHER PERSON OR ENTITY FOR WHOM OFF-AIRPORT USER MAY BE LIABLE (TOGETHER, "OFF-AIRPORT USER PERSONS"), OR ANY OF THEM, (C) THE CONDUCT OF OFF-AIRPORT USER'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY OFF-AIRPORT USER (OR BY ANY OF OFF-AIRPORT USER PERSONS) TO BE DONE IN CONNECTION WITH OR RELATED TO THIS PERMIT, (D) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF OFF-AIRPORT USER'S OBLIGATIONS UNDER THIS PERMIT, AND (E) WITHOUT LIMITING ANY OF THE FOREGOING, ANY NEGLIGENT ACT OR OMISSION OF OFF-AIRPORT USER OR OF ANY OF OFF-AIRPORT USER PERSONS UNDER, RELATED TO, OR IN CONNECTION WITH, THIS PERMIT, INCLUDING DAMAGES CAUSED BY AN THE NEGLIGENCE OF AN INDEMNIFIED PERSON.
- (2) With respect to the Off-Airport User's indemnity obligation set forth in subsection (1), Off-Airport User shall have no duty to indemnify the Indemnified Person for any Damages caused by the sole negligence of Indemnified Person.
- (3) If Indemnified Person suffer Damages arising out of or in connection with this Permit that are caused by the concurrent negligence of both the Off-Airport User and the Indemnified Person, the Off-Airport User's indemnity obligation set forth in subsection (1) will be limited to a fraction of the total Damages equivalent to the Off-Airport User's own percentage of responsibility.
- (4) With respect to Off-Airport User's duty to defend set forth herein in subsection (1), the Off-Airport User shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Permit, subject to the reasonable approval of such counsel by the Indemnified Person.

- (5) In the event that the Off-Airport User fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Permit, Indemnified Person shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Off-Airport User, and the Off-Airport User shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Indemnified Person in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.
- (6) The obligations set forth in this section shall survive the expiration or earlier termination, cancellation, or revocation of this Permit.

B. OFF-AIRPORT USER, FOR ITSELF, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND INVITEES, EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST THE CITY OR THE AIRPORT MANAGER BY REASON OF, AND EXPRESSLY RELEASES THE CITY AND THE AIRPORT MANAGER FROM ANY LIABILITY WITH RESPECT TO, ANY INJURY OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY, OR ANY OTHER HARM, DAMAGE, LOSS, OR INJURY, ON, WITHIN OR ABOUT THE OFF-AIRPORT PROPERTY OR AIRPORT CAUSED BY OR RESULTING FROM, IN WHOLE OR IN PART, ANY ACT OR OMISSION OF OFF-AIRPORT USER OR ANY OFF-AIRPORT USER PERSONS, OR ARISING OUT OF THE USE OF THE OFF-AIRPORT PROPERTY BY OFF-AIRPORT USER OR THE CONDUCT OF OFF-AIRPORT USER'S BUSINESS THEREON OR THEREIN OR IN CONNECTION WITH THIS PERMIT, OR ARISING OUT OF ANY BREACH OR DEFAULT BY OFF-AIRPORT USER IN THE PERFORMANCE OF OFF-AIRPORT USER'S OBLIGATIONS HEREUNDER, OR FROM ANY ACT OF GOD, STRIKE, ACT OF ANY GOVERNMENTAL AUTHORITY OR FROM ANY OTHER CAUSE, AND OFF-AIRPORT USER HEREBY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND AIRPORT MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGES, JUDGMENT, EXPENSE OR CLAIM ARISING OUT OF OR RESULTING FROM ANY SUCH DAMAGE, LOSS, INJURY, DEATH, OR ANY OTHER HARM.

17. Special Events. The City may sponsor certain special events, including, but not limited to, fireworks displays, automobile races and air shows, to be conducted on portions of the Airport, which may limit or obstruct access to the Airport ("Special Events"). As a material inducement to the City to enter into this Permit and to allow the access to the Airport set forth herein, and notwithstanding anything to the contrary contained herein, Off-Airport User, on behalf of Off-Airport User and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, invitees, subtenants, licensees or concessionaires of Off-Airport User and on behalf of any other party claiming any right to use the Off-Airport Property or the Airport by, through or under Off-Airport User, hereby: (i) agrees that the City 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 Airport; (ii) releases, waives and discharges the City and Airport Manager and their respective officials, officers, employees and agents, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or

obstruction of access to the 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 City or Manager or their respective officials, officers, employees and agents 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 or any other law, rule or regulation; and (v) agrees that if any portion of this Section is held to be invalid or unenforceable, the remainder of this paragraph shall not be affected thereby but shall continue in full force and effect.

18. Late Charge; Interest.

A. Off-Airport User's failure to pay sums due hereunder promptly may cause the City to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges. Therefore, if the annual Access Fee, or any installment thereof, is not received on or before the date on which it is due, Off-Airport User shall pay to the City a late charge in the amount of \$50.00 (provided, however, that if the \$50.00 late charge would be deemed in violation of law, such amount shall be reduced such that the late charge shall be equal to an amount determined by multiplying the amount of monthly rent times the highest rate of interest per annum allowed under applicable law). The late charge set forth herein represents a fair and reasonable estimate of the costs the City will incur by reason of such late payment. In addition to the foregoing late charges, Off-Airport User shall reimburse the City on demand for all returned check or other bank charges assessed against the City in connection with each of Off-Airport User's checks which is returned unpaid for any reason.

B. Any sums required to be paid hereunder and not paid when due, including attorneys' fees, shall bear interest, until paid, at the lesser of the following rates: (i) 18% per annum; or (ii) the highest rate allowed under applicable law. Interest shall accrue on monthly payments of the annual Access Fee and late charges from the fifth day of each month until such payments are received by the City, and on returned check charges from the date the City receives such returned check until such returned check is made good. All Permits between the City and Off-Airport User, whether now existing or hereafter arising, whether herein contained or in any other instrument or Permit, whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall any late charges, returned check charges, interest charges, or any other charges whatsoever, be deemed as interest charged, contracted for or received in excess of the amount permitted under applicable law, it particularly being the intention of the parties hereto to conform strictly to the laws of the State of Texas. Any portion of such charges which are deemed as interest in excess of the amount permitted under applicable law, as of the date such charge is due, shall be applied to a reduction of the annual Access Fee next coming due hereunder, or, if such portion of charges exceeds the annual Access Fee next coming due hereunder, such amount shall be refunded to Off-Airport User. If a specific due date for any monetary obligation owed by Off-Airport User to the City is not provided for in this Permit, the due date for such obligation shall be that date which is ten (10) days after the City delivers a written request for payment to Off-Airport User.

19. Address for Notice and Payments. All payments, notices, demands, requests, and other communications in connection with this Permit 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 if sent by certified mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for such notices and other communications are as follows:

To the City:

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

To Off-Airport User:

*Address As First Given Above Under Heading of  
"Off-Airport User Contact Information And  
Other Salient Terms"*

The addresses and addressees for the purpose of 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.

Off-Airport User represents that its mailing address, Off-Airport Property address, electronic mail address, telephone number, and telecopy (fax) number as set forth above are true and correct. If such information changes at any time, Off-Airport User shall promptly provide notice of such change of information to the City as required herein.

20. Exhibits. The exhibits attached (or to be attached) hereto are incorporated herein and made a part of this Permit for all purposes.

21. Venue; Applicable Law. In the event of any action under this Permit, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Permit; and, with respect to any conflict of law provisions, the such conflict of law provisions shall not affect the application of the law of the State of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Permit.

22. Severability. If any clause, paragraph, section or portion of this Permit shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Permit shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there shall be added automatically as a part of this Permit a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

23. Time of the Essence. Time is of the essence in the payment and performance of the duties and obligations imposed upon Off-Airport User by the terms and conditions of this Permit.

24. Prior Permits Rescinded. This Permit supersedes and replaces all prior access permits, agreements, rights or claims regarding a right or entitlement to access the Airport from the Off-Airport Property, which are hereby terminated.

25. Authorized Parties. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Permit on behalf of the parties hereto.

**IN WITNESS WHEREOF,** the undersigned parties have executed this Permit to be effective as of the Effective Date first above written.

**TOWN OF ADDISON, TEXAS**

**OFF-AIRPORT USER**

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

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

SAMPLE

**EXHIBIT A**

[DESCRIPTION AND DEPICTION OF OFF-AIRPORT PROPERTY]

SAMPLE