



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Airport
DCM: David Gaines
DATE: November 15, 2022

SUBJECT

Consider adoption of an ordinance of the City of Denton, Texas approving an Assignment of Airport Leases from Sykes-Vaughan Investments, LLC to Sheltair Aviation Denton, LLC of Airport Leases covering property located at 4700 Spartan Drive, 4780 Spartan Drive, 4849 Spartan Drive, 4700 John Carrell, 4790 John Carrell, 4600 Spartan Drive, 4850 Spartan Drive, 5007 Airport Road, 5077 Sabre Drive, and 5050 Warbird Drive, Denton, Texas at the Denton Enterprise Airport; authorizing the City Manager to execute the Assignment of Airport Leases and related Ground Lessor Estoppel and Consent Agreement; and providing an effective date. Airport Advisory Board recommends approval (6-0).

BACKGROUND

4700 Spartan Drive (“Lease 1”) - The Sykes-Vaughan Investments, LLC, lease agreement is a 30-year agreement, dated January 18, 2005, effective January 18, 2005 to January 17, 2035. The lease term may be extended by two optional renewals, each for an additional ten years. 4700 Spartan Drive (Parcel M) is a .7805-acre parcel that includes one, 12,600 square foot building.

4780 Spartan Drive (“Lease 2”) - The Sykes-Vaughan Investments, LLC, lease agreement is a 30-year agreement, dated October 4, 2005, effective November 1, 2005 to October 31, 2035. The lease term may be extended by two optional renewals, each for an additional ten years. 4780 Spartan Drive (Parcel L) is a .7805-acre parcel that includes one, 12,600 square foot building.

4849 Spartan Drive (“Lease 3”) - The Sykes-Vaughan Investments, LLC, lease agreement is a 35-year and 4-month agreement, dated November 19, 2013, effective November 19, 2013 to March 1, 2049. 4849 Spartan Drive is a 1.48-acre parcel that include one, 15,494 square foot building.

4700 & 4790 John Carrell (“Lease 4”) - The Sykes-Vaughan Investments, LLC, lease agreement is a 30-year agreement, dated September 11, 2007, effective September 11, 2007 to September 11, 2037. The lease term may be extended by one optional renewal, for an additional ten years. 4700 John Carrell is a .74-acre parcel that includes one 14,400 square foot building. 4790 John Carrell is a .74-acre parcel that includes one 14,400 square foot building.

4600 & 4850 Spartan Drive (“Lease 5) – The Sykes-Vaughan Investments, LLC, lease agreement is a 30-year agreement, dated January 6, 2009, effective March 1, 2009 to February 28, 2039. The lease term may be extended by one optional renewal, for an additional ten years. The leased premises include Parcel A (.78-acres that includes one 24,000 square foot building), Parcel B and C (.34-acres), Parcel D (1.83-acres), Parcel E (1.08-acres), Parcel F (.09-acres), Parcel G (.16-acres), Parcel H (.59-acres that includes one 15,000 square foot building), Parcel J (.95-acres), and Parcel K (.37-acres).

5007 Airport Road, 5077 Sabre Drive, and 5050 Warbird Drive (“Lease 6”) - The Sykes-Vaughan Investments, LLC, lease agreement is a 40-year agreement, dated September 1, 2015, effective September 1, 2015 to August 31, 2055. The leased premises include 16.23-acres, and eleven (11) buildings totaling 169,650 square feet. The leased premises are utilized for self-fueling (.50-acres), aircraft parking (1.338-acres), and aeronautical business.

Sheltair Aviation Denton, LLC, is acquiring the building facility for commercial use. The proposed assignments include renegotiated terms or conditions, for each lease, specifically, the following:

1. Section I.B. is hereby deleted and replaced with the following:

Lessee agrees to comply with the federally required provisions in Attachment 1, as such may be amended or updated from time to time by the FAA.

2. Attachment 1 is hereby added to the Lease:

ATTACHMENT 1

REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, LESSEE, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “LESSEE”) agrees as follows:

1. **Compliance with Regulations:** LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** LESSEE, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. LESSEE will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by LESSEE for work to be performed under a subcontract, including

procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by LESSEE of LESSEE's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of LESSEE is in the exclusive possession of another who fails or refuses to furnish the information, LESSEE will so certify to LESSOR or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of LESSEE's noncompliance with the Non-discrimination provisions of this contract, LESSOR will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** LESSEE will include the provisions of paragraphs one through six of this Exhibit B, Section (A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. LESSEE will take action with respect to any contract or procurement as LESSOR or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if LESSEE becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, LESSEE may request LESSOR to enter into any litigation to protect the interests of LESSOR. In addition, LESSEE may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. LESSEE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, LESSEE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. LESSEE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from

participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that LESSEE will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, LESSEE, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. General Civil Rights Provision. LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex (including gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If LESSEE transfers its obligation to another, the transferee is obligated in the same manner as LESSEE. This provision obligates LESSEE for the period during which the property is owned, used or possessed by LESSEE and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, LESSOR will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. LESSEE agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which LESSEE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

3. Section V.F shall be added to the Lease:

Section V. F. Environmental Laws.

1. No Violation of Environmental Laws. References to Lessee shall refer to Sheltair only during the time Sheltair holds the leasehold interest under the Lease. Lessee shall not cause or permit any substance or material that is regulated by any Environmental Law ("Hazardous Materials") to be used, produced, stored, transported, brought upon, or released on, under, or about the Leased Premises or the Airport by Lessee or Lessee's Associates in violation of applicable laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law that may be applicable at any time during the term of this Agreement including, but not limited to, the Airport Rules and Regulations, Minimum Operating Standards, master plans and zoning codes (the "Laws and Regulations"), and all Laws and

Regulations pertaining to the environment (the "Environmental Laws"). Lessee is responsible for any such violation as provided by Section V.F.3 and as set forth below.

2. Response to Violations. Lessee agrees that in the event of a release or threat of release of any Hazardous Material by Lessee or Lessee's employees, officers, directors, sublessees (that are approved by City pursuant to this Agreement), contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Lessee's Associates") at the Airport, Lessee shall provide Lessor with prompt notice of the same. Lessee shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If Lessor has reasonable cause to believe that any such release or threat of release has occurred, Lessor may request, in writing, that Lessee conduct reasonable testing and analysis (using qualified independent experts acceptable to Lessor) to show that Lessee is complying with applicable Environmental Laws. Lessor may conduct the same at Lessee's expense if Lessee fails to respond in a reasonable manner. Lessee shall cease any or all of Lessee's activities as Lessor determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Lessee or Lessee's Associates violate any Environmental Laws at the Airport (whether due to the release of a Hazardous Material or otherwise), Lessee, at Lessee's sole expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to Lessor a written remediation plan, and Lessor reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with Lessor and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide Lessor copies of all documents pertaining to any environmental concern that are not subject to Lessee's attorney-client privilege.

3. Obligations upon Termination and Authorized Transfers. Upon any expiration or termination of this Agreement or any change in possession of the Leased Premises authorized by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that Lessee has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of past violations or specific uses of the Leased Premises. **IF THE SITE IS CONTAMINATED DURING LESSEE'S POSSESSION, LESSEE SHALL BEAR ALL COSTS AND RESPONSIBILITY FOR THE REQUIRED CLEAN UP, AND SHALL HOLD LESSOR, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS HARMLESS THEREFROM.** Notwithstanding anything to the contrary, the obligations of this Section V.F. shall survive any termination of this Agreement.

4. Section IX of the Lease is deleted in its entirety and replaced with the following:

IX. LEASEHOLD MORTGAGE PROVISIONS

A. **Right to Mortgage.** Lessee may encumber its leasehold estate by granting a mortgage or other similar instrument creating a mortgage lien against the Lessee's leasehold interest. Any such instrument which creates a first mortgage lien is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgage") during the Lease Term and any extension thereof; provided that, Lessor shall not be obligated to, nor deemed to have subjected or subordinated Lessor's fee simple interest in the Leased Premises to any Leasehold Mortgage, nor subordinated the Lessor's interest in this Lease to such Leasehold

Mortgage. Lessor's interests in the fee and in this Lease are and shall always remain superior and prior in right to any Leasehold Mortgage.

B. Notice of Default, Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Lessor, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Lessor, Lessor upon serving Lessee with any notice of default under this Lease, shall also serve a copy of that notice of default upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Lessee. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Lessor.

C. Right to Cure. In case Lessee shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default, within the time periods set forth for Lessee in this Lease Agreement, whether same consists of the failure to pay rent and other payments as further set forth in Article IV, or the failure to perform any other matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Lessee subject to Lessor's rights to damages, restitution, or other legal or equitable monetary remedies related directly to the default(s) at issue. The Leasehold Mortgagee, upon receiving such notice, shall have, in addition to any time to cure a default (a "Cure Period") extended to Lessee under the terms of this Lease, a period of an additional thirty (30) days within which to cure the default or cause same to be cured or, if such default cannot reasonably be cured within such 30 days, to commence to cure such default with diligence and continuity, notwithstanding the foregoing:

- i. Where a provision of this Lease provides less than a thirty (30) day Cure Period, the Leasehold Mortgagee shall also have an additional fifteen (15) days Cure Period following the Lessee's Cure Period; or
- ii. Where a provision of this Lease expressly provides that Lessee has no opportunity to cure, the Leasehold Mortgagee shall have no Cure Period.

In case Lessee shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default, within the time periods set forth above, whether same consists of the failure to pay rent and other payments as further set forth in Article IV, or the failure to perform any other matter or thing which Lessee is required to do or perform and Lessor shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Lessee.

D. Cure of Default or Termination. Lessor will take no action to affect a termination of the Lease until such time as the Cure Period provided herein has expired and the defaults remain uncured. During the Cure Period, the Leasehold Mortgagee shall be entitled to: 1) obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the Leasehold Mortgagee has obtained possession; or 2) institute foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence and continuity and thereafter proceed to cure such default; provided, however, that the Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for Lessor

serving such notice of default shall be cured, and provided further, that nothing in this paragraph shall preclude Lessor from exercising any other rights or remedies under this Lease with respect to the default.

E. Foreclosure. The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, subject to Lessor's written consent, which shall not be unreasonably withheld, and effective upon such assignment whereupon such Leasehold Mortgagee or assignee shall become and remain liable under this Lease as provided in this paragraph, except that such Leasehold Mortgagee may assign this Lease with Lessor's consent, which shall not be unreasonably withheld, and subject to the assignee's meeting the requirements of Section IX.I herein to the City's reasonable satisfaction, and effective upon such assignment, the new lessee shall become and remain liable to Lessor under this Lease, and the Leasehold Mortgagee shall no longer be liable to Lessor. If a Leasehold Mortgagee shall become the owner or holder of Lessee's interest in this Lease by foreclosure of its Leasehold Mortgage or by assignment of this Lease in lieu of foreclosure, the term "Lessee" as used in this Lease, shall include the owner or holder of Lessee's interest in the event of a sale, assignment or other disposition of Lessee's interest in this Lease by the Leasehold Mortgagee.

Reference in this Lease to acquisition of Lessee's interest in this Lease by the Leasehold Mortgagee shall be deemed to include, where circumstances require, to acquisition of Lessee's interest in this Lease by any purchaser at a sale on foreclosure of the Leasehold Mortgage and provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser. Leasehold Mortgagee's acquisition of Lessee's interest in this Lease and any assignment of the acquired interest by the Leasehold Mortgagee shall not be deemed a novation of Lessee's obligations under this Lease. Lessor does not authorize any novation of Lessee's obligations under this Lease.

F. Prohibition on Fee Simple Transfer. So long as Lessee's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree, for the benefit of such Leasehold Mortgagee, that Lessor shall not sell, grant or convey to Lessee all or any portion of Lessor's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee (which consent shall not be unreasonably withheld, conditioned, or delayed, provided the parties agree in writing that such sale, grant, or conveyance shall not result in a merger of this Lease into fee simple title to the Premises). In the event of any such sale, grant, or conveyance by Lessor to Lessee, Lessor and Lessee agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This paragraph shall not be construed to prevent any, or to require any consent of any leasehold mortgagee or Lessee to any, sale, grant, or conveyance of Lessor's fee simple title by Lessor to any person, firm, or corporation other than Lessee, its successors, legal representatives, and assigns.

G. Leasehold Mortgagee. Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee of a Leasehold Mortgagee; provided that such assignee shall forward to Lessor, pursuant to Section XI.B a duplicate original of the assignment of the Leasehold Mortgage in a form proper for recording or a copy of such assignment, as recorded in the Public Records, together with a written notice setting forth the name and address

of the assignee and, to the extent available, the name, telephone number, facsimile number and email address of a representative of the assignee to whom notices may be sent.

H. Subordination. Any leasehold mortgage shall be specifically subject and subordinate to Lessor's rights under this Lease and Lessor's fee simple interest in the Premises. Despite any provision which is or may appear to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Lessor in the Premises, or any portion of same, be subordinated to the leasehold mortgage or encumbered by the leasehold mortgage.

I. Assignees. Notwithstanding anything herein to the contrary, after a default by Lessee whereby any Leasehold Mortgagee shall acquire any rights and/or obligations under this Lease, including as a result of bidding or lack thereof at auction after foreclosure (this also includes any rights/obligations a Leasehold Mortgagee shall acquire under any other lease of Lessee at the Airport, as a result of cross- default provisions), and thereafter the Leasehold Mortgagee or referee at sale proposes to assign, sell, rent, or otherwise transfer any interests, rights, and obligations to a special purpose entity and/or third party, or allow use of the property under this Lease (or any other property under any other lease at the Airport that Lessee is a party to as a result of cross-default provisions) by a special purpose entity and/or third party, any such assignment, sale, transfer, or use of the property under this Lease (or any other property under any other lease at the Airport that Lessee is a party to as a result of cross-default provisions) by a special purpose entity and/or third party is contingent upon Lessor confirming to its reasonable satisfaction that the special purpose entity and/or third party has the financial and operational capabilities sufficient for the proper conduct of a fixed base operator as those capabilities are defined in this Lease and the Minimum Standards for Aeronautical Activities and Rules and Regulations, as may be amended from time-to-time by Lessor applicable to the Airport. In such case, the Leasehold Mortgagee agrees to make commercially reasonable efforts to promptly find such a special purpose entity and/or third party meeting the requirements of this Section IX.I to enter into a new agreement with the Lessor for the remainder of the Lease Term and/or to temporarily perform fixed based operator services at the property while the Leasehold Mortgagee secures a replacement lessee. Lessor may also submit nominees to the Leasehold Mortgagee, and the Leasehold Mortgagee shall negotiate in good faith and act with such nominees in order to determine whether any such nominee meets the Leasehold Mortgagee's qualifications.

J. Estoppel Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing, in substantially the same form as Attachment 2, certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied

upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge.

5. Attachment 2 is hereby added to the Lease:

ATTACHMENT 2

GROUND LESSOR ESTOPPEL AND CONSENT AGREEMENT

WHEREAS, _____ a _____ **[corporation]** **[limited liability company]** (hereinafter "Landlord"), or its predecessor in interest, has heretofore leased certain lands described on Exhibit A attached hereto (hereinafter the "Premises") to _____ a _____ **[corporation]** **[limited liability company]** (hereinafter "Tenant"), or its predecessor in interest, pursuant to an agreement of lease, as more particularly described on Exhibit B (as same may have been amended, modified, substituted or extended, hereinafter the "Lease");

WHEREAS, Tenant and certain other affiliates of Borrower, as co-borrowers or guarantors (collectively, "Loan Parties") intend to enter into a Credit Agreement among Borrower, the Loan Parties, SunTrust Bank, as Administrative Agent and Collateral Agent (together with its successors and assigns, the "Administrative Agent"), Swingline Lender and Issuing Bank, and the Lenders from time to time party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement). As security for the Obligations under the Credit Agreement and the other Loan Documents, Tenant intends to execute a first leasehold **[mortgage]** **[deed of trust]** **[deed to secure debt]** for the benefit of Administrative Agent upon Tenant's interest as tenant under the Lease in the Premises (the "Leasehold Mortgage"); and

WHEREAS, the Administrative Agent and the Lenders are unwilling to enter into the Credit Agreement unless Landlord reaffirms to Administrative Agent that the provisions of the Lease respecting leasehold mortgages are restated and confirmed for Administrative Agent's benefit **[and certain additional agreements are made with Administrative Agent with respect to Administrative Agent's rights as the holder of the Leasehold Mortgage]**;

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord hereby certifies to and agrees with Administrative Agent as follows:

1. **[Upon the recording of the Leasehold Mortgage, Landlord hereby recognizes Administrative Agent as a "Leasehold Mortgagee" as defined in Section ___ of the Lease, for all purposes under the Lease] [Landlord hereby consents to the granting by Tenant of a mortgage on Tenant's interest pursuant to the Lease to Administrative Agent.]**

2. **[All of the leasehold mortgagee protection provisions contained in the Lease, including but not limited to Sections(s) _____, and all other provisions inuring to the benefit of leasehold mortgagees or their successors and assigns contained in the Lease, are**

hereby incorporated into this agreement by reference and restated and confirmed by Landlord for the benefit of Administrative Agent, its successors and assigns.] Landlord [confirms that pursuant to the provisions contained in Section(s) ___ of the Lease] [covenants and agrees] that Landlord is not permitted, in the absence of an uncured default of Tenant under the Lease or a default of Tenant where a provision of the Lease expressly provides that Tenant has no opportunity to cure, to disturb the possession, interest or quiet enjoyment of Tenant or any subtenant of the Tenant, or in any manner, which would adversely affect the security provided in the Leasehold Mortgage.

3. Landlord hereby [confirms that pursuant to Section ___ of the Lease,] [agrees that] the Lease shall not be modified, terminated, amended, altered or cancelled, nor shall a surrender of the Premises be accepted by Landlord, without prior written notice to Administrative Agent and after the expiration of all applicable opportunities to cure provided for in the Lease, and that any such action taken without such notice and expiration shall not be binding on Tenant or Administrative Agent.

4. Landlord hereby [confirms that, pursuant to Section ___ of the Lease] [covenants and agrees that], in the event that the Lease is terminated for any reason including, without limitation, as a result of a rejection of the Lease in a bankruptcy proceeding, upon Administrative Agent's request, and subject to the requirements in Section IX.I of the Lease Landlord shall enter into a new ground lease with Administrative Agent and such new ground lease shall be upon the same terms and conditions of the unexpired term of the Lease immediately prior to such termination.

5. Landlord hereby confirms with respect to the new ground lease referred to in [Section ___ of the Lease] [paragraph 4 above] that, should Administrative Agent become the tenant under a new lease [pursuant to Section ___ of the Lease]:

(a) title to all improvements now owned by Tenant [including the Building, as defined in the Lease], situate on the Premises shall automatically vest in Administrative Agent [pursuant to Section ___ of the Lease]; and

(b) Landlord shall promptly assign to Administrative Agent all space leases and subleases under which the tenants have attained, with the consent of Administrative Agent [pursuant to Section ___ of the Lease], to Landlord.

6. Landlord hereby [confirms] [covenants and agrees] that the Leasehold Mortgage shall not be subject or subordinate to any mortgage encumbering the fee estate of the Premises.

7. Landlord hereby [confirms the provisions of Section ___ of the Lease to the effect] [covenants and agrees] that Landlord shall deliver to Administrative Agent written notice of any default by Tenant under the Lease simultaneously with sending such notice to Tenant and that no notice of default given to Tenant, and no exercise of any remedy by Landlord as a result of any such default, shall be effective unless such notice shall have been delivered to Administrative Agent. Landlord hereby further [confirms the provisions of Section ___ of the Lease to the effect] [covenants and agrees] that Administrative Agent shall have the right, but

not the obligation, to cure any default by Tenant under the Lease and Administrative Agent shall be afforded (a) 30 additional days to cure any such default where Tenant has 30 days to cure pursuant to the Lease; or (b) 15 additional days where the Tenant has less than 30 days to cure such default pursuant to the Lease; or (c) in the event that any such default cannot, with reasonable diligence, be cured within such cure period, such longer period as may be required to complete such cure including, without limitation, such time as may be required for Administrative Agent to gain possession of Tenant's interest under the Lease, provided that Administrative Agent notifies Landlord of its intention to cure such default and Administrative Agent promptly commences and diligently pursues such cure to completion.

8. Subject to any assignee or sublessee meeting the requirements of Section IX.I of the Lease, Landlord hereby **[confirms] [agrees]** that Tenant shall have the right to assign or sublet Tenant's interest under the Lease to Administrative Agent, its successor or assign without the consent of Landlord, and in the event Tenant's interest under the Lease is so assigned or sublet to Administrative Agent, its successor or assign (as applicable, the "Assignee"), such Assignee shall have the right to further assign or sublet the Tenant's interest in the Lease without the need to obtain the consent of Landlord.

9. Landlord hereby **[confirms] [covenants and agrees]** that Administrative Agent shall be entitled to participate in any settlement regarding insurance or condemnation proceeds or awards, to collect and hold any such proceeds or awards and to determine and direct whether any such proceeds or awards are made available for the restoration of the Premises or are applied to the repayment of the Obligations under the Credit Agreement and the other Loan Documents.

10. Landlord hereby **[confirms the provisions of Section ___ to the effect] [agrees]** that Administrative Agent shall have the right, pursuant to the terms of the Lease, to exercise any option to renew the term of the Lease or any option to purchase the Premises, if the Tenant shall fail to exercise any option to so extend or purchase.

11. Landlord hereby certifies as follows:

(a) Landlord is the owner of the fee simple estate in the Premises and is the landlord under the Lease.

(b) Tenant is the owner of the leasehold estate in the Premises and is the tenant under the Lease.

(c) The Lease is in full force and effect in accordance with its terms and has not been further assigned, supplemented, modified or otherwise amended except as set forth in Exhibit B attached hereto and each of the obligations on Landlord's part to be performed to date under the Lease have been performed.

(d) To the best of Landlord's knowledge, each of the obligations on Tenant's part to be performed to date under the Lease have been performed.

(e) To the best of Landlord's knowledge, Borrower has no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.

(f) Except as set forth in Exhibit B attached hereto, there do not exist any other agreements (including Subordination, Non-Disturbance and Attornment Agreements) concerning the Premises, whether oral or written between Landlord and Tenant (or their respective predecessors or successors) under the Lease.

(g) As of the date hereof, no basic rent or additional rent is due from Tenant under the Lease. The basic rent currently payable by Tenant under the Lease is \$_____ per annum. Basic rent due under the Lease has been paid through _____.

(h) The term commencement date of the Lease was _____, and the initial term/current extension term of the lease shall expire on _____.

(i) Neither Landlord nor Tenant has assigned the Lease or sublet the Premises.

(j) Landlord has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Lease or the Premises and there are currently no mortgages, deeds of trust or other security interests encumbering Landlord's fee interest in the Premises and no third party has an option or preferential right to purchase all or any part of the Premises.

(k) Landlord has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against the Landlord's interest in the Premises.

(l) Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises and its operation thereon, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim or such violation.

(m) The Lease attached hereto is a true, correct and complete copy thereof.

12. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page hereof and, if addressed to Administrative Agent, to _____, _____, _____, Attention: _____, and if addressed to Landlord, to _____, _____, _____, Attention: _____, or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

This Estoppel and Agreement and the representations and agreements made herein are given with the understanding that this Estoppel and Agreement constitutes a material inducement for Administrative Agent and the Lenders to enter into the Credit Agreement and that Administrative Agent and the Lenders shall rely hereon in entering into the Credit Agreement. This Estoppel and Agreement and the representations and agreements made herein shall inure to the benefit of Administrative Agent, its successors and assigns and shall be binding on Landlord, its heirs, legal representatives, successors and assigns.

This Estoppel and Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Estoppel and Agreement may be detached from any counterpart of this Estoppel and Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Estoppel and Agreement identical in form hereto but having attached to it one or more additional signature pages.

Executed this ____ day of _____, 202__.

LANDLORD:

[INSERT SIGNATURE BLOCK]

[INSERT EXHIBIT A AND B]

6. Section XV of the Lease is amended to delete the Lessee address information and to replace it with:

Sheltair Aviation Denton, LLC
Attn: Lisa Holland, President
4860 NE 12th Avenue, Fort Lauderdale, FL 33334
lholland@sheltairaviation.com

OPTIONS

1. Adopt the proposed ordinance approving the assignment of the lease agreement as requested by Sykes-Vaughan Investments, LLC, and assign to Sheltair Aviation Denton, LLC.
2. Adopt the proposed ordinance approving the assignment of the Sykes-Vaughan Investments, LLC lease to Sheltair Aviation Denton, LLC with additional direction.
3. Take no action at this time.

RECOMMENDATION

Airport Staff recommends approval of the Consent to Lease Assignment (**Exhibit 4**)

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

4700 Spartan Drive - Lease 1

Council approved the lease agreement on January 18, 2005, Ordinance 2005-020
Council approved a first amendment on May 15, 2012, Ordinance 2012-111
Airport Advisory Board recommended approval of lease assignment on November 9, 2022

4780 Spartan Drive - Lease 2

Council approved the lease agreement on October 4, 2005, Ordinance 2005-311
City Manager approved a first amendment on November 3, 2005
Council approved a second amendment on May 15, 2012, Ordinance 2012-112
Airport Advisory Board recommended approval of lease assignment on November 9, 2022

4849 Spartan Drive - Lease 3

Council approved the lease agreement on May 12, 1998, Ordinance 98-133
Council approved a resolution for lease assignment on October 6, 1998, Resolution 98-054
Council approved a lease assignment on July 20, 2010, Ordinance 2010-177
Council approved a third amendment on September 17, 2013, Ordinance 2013-258
Council approved a first amendment on November 19, 2013, Ordinance 2013-321
Airport Advisory Board recommended approval of lease assignment on November 9, 2022

4700 & 4790 John Carrell - Lease 4

Council approved the lease agreement on September 11, 2007, Ordinance 2007-186
Council approved a lease assignment on September 23, 2008, Ordinance 2008-230
Airport Advisory Board recommended approval of lease assignment on November 9, 2022

4600 & 4850 Spartan Drive - Lease 5

Council approved the lease agreement on January 6, 2009, Ordinance 2009-018
Council approved a first amendment on December 15, 2009, Ordinance 2009-323
Council approved a second amendment on August 17, 2010, Ordinance 2010-193
Council approved a third amendment on March 6, 2012, Ordinance 2012-056
Council approved a fourth amendment on March 6, 2012, Ordinance 2012-057
Council approved a fifth amendment on September 18, 2012, Ordinance 2012-235
Airport Advisory Board recommended approval of lease assignment on November 9, 2022

5007 Airport Road, 5077 Sabre Drive, and 5050 Warbird Drive - Lease 6

Council approved the lease agreement on September 1, 2015, Ordinance 2015-259

Council approved a lease assignment on June 20, 2017, Ordinance 2017-177

Airport Advisory Board recommended approval of lease assignment on November 9, 2022

FISCAL INFORMATION

4700 Spartan Drive - Lease 1

This property lease is for .7805-acres of land for a current annual lease rate of \$7,704.54. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every two years, with the next adjustment to occur on January 1, 2023.

4780 Spartan Drive - Lease 2

This property lease is for .7805-acres of land for a current annual lease rate of \$8,871.98. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every year, with the next adjustment to occur on November 1, 2023.

4849 Spartan Drive - Lease 3

This property lease is for 1.48-acres of land for a current annual lease rate of \$26,166.58. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every year, with the next adjustment to occur on May 15, 2023.

4700 & 4790 John Carrell - Lease 4

This property lease is for 1.48-acres of land for a current annual lease rate of \$14,376.69. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every two years, with the next adjustment to occur on September 1, 2023.

4600 & 4850 Spartan Drive - Lease 5

This property lease is for 6.19-acres of land for a current annual lease rate of \$77,840.41. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every two years, with the next adjustments to occur on March 1, 2023, September 1, 2023, and March 1, 2024.

5007 Airport Road, 5077 Sabre Drive, and 5050 Warbird Drive - Lease 6

This property lease is for 16.23-acres of land for a current annual lease rate of \$155,407.79. The annual lease rate is subject to a Consumer Price Index for all urban consumers (CPI-U) increase, every two years, with the next adjustment to occur on June 16, 2023.

A transfer fee of \$6,000 has been received from Assignor.

EXHIBITS

1. Agenda Information Sheet
2. Location map
3. Request to Assign
4. Ordinance - Consent to Lease Assignment (6)
5. LLC Information

Respectfully submitted:
Scott Gray
Director - Airport