

PUBLIC MASS TRANSIT EASEMENT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF DALLAS §

That the **City of Dallas**, of the County of Dallas, State of Texas, pursuant to Resolution No. _____, adopted _____, and the **City of Fort Worth**, of the County of Tarrant, State of Texas, pursuant to M&C No. _____, adopted _____, hereinafter referred to as “Grantors”, whether one or more, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the **Dallas/Fort Worth International Airport Board**, hereinafter referred to as “the Airport Board”, receipt of which is hereby acknowledged, and for which no lien is retained either expressed or implied, have this day sold and by these presents do grant, bargain, sell and convey unto the **Dallas Area Rapid Transit Authority**, hereinafter referred to as “Grantee”, an easement (“this Easement”) to construct, reconstruct, and perpetually maintain, at Grantee’s sole cost and expense, public rail transit facilities, including without limitation associated utilities, communication facilities, bridge structures, spans, and any other related facilities or structures that facilitate, support or promote public rail transit, in, upon, under or across a tract of land at **Dallas/Fort Worth International Airport** (“DFW Airport”), more particularly described in **Exhibit A** (“the Property”), which is attached hereto and incorporated herein for any and all purposes.

This Easement shall include the subsurface of the Property to a depth of no more than 30 feet below existing ground level and the airspace above existing ground level of the Property to a height of no more than 40 feet, except as reasonably necessary to bridge over or tunnel under DFW Airport facilities or improvements. Any such bridges or tunnels shall be built to specifications reasonably established by the Airport Board, and shall be repaired or rebuilt as reasonably necessary to protect DFW Airport facilities or improvements and those using them. This Easement is expressly made subject to Grantors’ and Airport Board’s, and their respective tenants, successors or assigns, rights to make any use of or construct any improvements on, above, below or through the Property or anywhere within this Easement so long as such use or improvements within this Easement do not unreasonably interfere with Grantee’s use of this Easement for permitted purposes. Grantors reserve for the benefit of the Airport Board, and for those acting by or through them, the right to use and to have ingress to and egress from the public access areas of the Property for any lawful purpose.

Nothing in this Easement shall affect Grantors’ title to all of the oil, gas and other minerals in and under and that may be produced from the Property or any land at DFW Airport provided that the surface of the Property shall not be used for the purpose of exploring, developing or mining or drilling for same in a manner that interferes with Grantee’s use of the surface and subsurface of this Easement for the permitted purposes.

Grantors retain for their own benefit, and for the benefit of all aircraft operators, a right of avigation above the Property. Said right of avigation includes the right of free and unobstructed passage of aircraft (“aircraft” being defined as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air), by whomsoever operated, in the airspace above and adjacent to the Property, at or above the elevation of 840 feet above mean sea level, or structural heights established by applicable local zoning ordinances, whichever height is lower, such area hereinafter referred to as the “permitted air space”, together with the right in all air space above the surface of the Property to cause damages to the Property or to persons occupying or on such Property, from noise, vibration, fumes, dust,

fuel, lubricant particles, and all other effects that may be caused by the operation of aircraft in the permitted air space.

Grantors, their successors and assigns, also reserve and retain a continuing right to take any action necessary to prevent the erection or growth of any structure, tree or other object into the permitted air space and to remove from the permitted air space any and all structures, trees or other objects that may at any time project or extend into same, together with the right of ingress to, egress from and passage over the Property for such purposes.

Further, as a condition of this Easement, and as part of the consideration therefor, Grantee, by the acceptance of this grant, hereby agrees to waive, release, and forever acquit Grantors, the Airport Board, and their respective successors and assigns, and their officers, agents and employees, from and against any and all claims for damages of any kind that Grantee might hereafter assert by reason of the passage of any and all aircraft within the permitted air space as defined above. By acceptance of this grant, Grantee agrees not to file a claim or lawsuit against Grantors, the Airport Board, and their respective successors and assigns, and their officers, agents and employees, for personal injury (including death), property damage or other harm suffered by any person or persons that may arise out of or be occasioned by the operation of aircraft, within the permitted air space or adjacent thereto, landing at or taking off from, or operating at, on, or adjacent to the DFW Airport as it is now or as it may hereafter be configured, or any other airport owned by either of the Grantors, except that the release provided for in this paragraph shall not be construed to release the owners or operators of aircraft from liability for damage or injury to persons or property caused by falling aircraft or falling physical objects from aircraft, except as stated herein with respect to noise, vibration, fumes, dust and lubricant particles. Said right of aviation and other rights reserved and retained herein by Grantors shall be binding upon Grantee, Grantee's successors, heirs, executors, administrators and assigns, and shall be a covenant running with the land.

This Easement is subject to all other easements, leases, agreements, licenses, or other interests that affect the Property, and that are matters of public record or would otherwise be disclosed by title examination, survey, investigation or inquiry, including without limitation the rights of parties in possession of the Property, whether over, upon, under, through, in or across the Property ("the Occupancy Interests"). This Easement is also subject to any utilities, pipelines or communications facilities, including without limitation water and wastewater lines, gas lines, and storm sewers, owned or operated by Grantors or any other entity, public or private ("the Utilities"). Grantee shall be solely responsible, at its expense, for determining and verifying the location of Occupancy Interests and Utilities in, on or around the Property and this Easement and for properly protecting and/or relocating the Occupancy Interests and the Utilities, including without limitation those owned by Grantors or Airport Board. Any information that has been provided or is provided by Grantor or Airport Board regarding the location of any Occupancy Interests or Utilities, whether within the Easement, the Property or elsewhere, is for general information only and shall not relieve the Grantee of the above-stated obligation to independently determine and verify the location of Occupancy Interests and Utilities.

Grantee acknowledges that Grantors have the power of eminent domain as to this Easement, and if it ever becomes necessary for Grantors to take part or all of the Property for a public purpose, Grantors shall have the option of mitigating their duty to pay just compensation by relocating the Easement and all affected facilities at Grantors' or Airport Board's expense. Except as set forth herein, neither Grantors nor the Airport Board shall be obligated by this Easement to construct any improvements on the Property or servicing the Property.

All improvements constructed on the Easement by Grantee or for Grantee, as well as all alterations or additions thereto made by Grantee, shall be owned by Grantee; provided that upon termination or abandonment of this Easement by Grantee, the Airport Board shall have the right, within the Airport Board's sole discretion, to compel Grantee to either (a) remove improvements and restore the Property as specified by the Airport Board, at Grantee's expense, or (b) abandon and not remove improvements as specified by the Airport Board, nor waste, destroy, demolish or alter them, without payment of consideration therefor, which upon such abandonment shall become automatically owned by Airport Board, without the need for any further deed or documentation.

Grantee shall not consent to any liens on the Property, and Grantee shall undertake at its sole expense to discharge or void any liens involuntarily asserted against the Property as a result of Grantee's operations within the Property.

In the event of a conflict between the ordinances, codes, regulations, rules or policies of Grantors or the Airport Board and those of Grantee, those of Grantors or the Airport Board shall be controlling. Notwithstanding anything that could be construed to the contrary, and as a condition of this Easement, and as part of the consideration therefore, Grantee, by the acceptance of this grant, expressly agrees that no construction shall be performed on the Property or within the Easement until Airport Board has reviewed and approved Grantee's plans and has issued a permit allowing such construction pursuant to provisions of Airport Board's Construction and Fire Prevention Resolution or any other rules and regulations of Airport Board.

GRANTORS HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (H) EXCEPT FOR THE WARRANTY OF TITLE IN THIS GRANT, ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, GRANTORS HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE IN OR ON THE PROPERTY OF ANY ENVIRONMENTAL SUBSTANCES, HAZARDS OR CONDITIONS OR PRESENCE OF ANY ENDANGERED OR PROTECTED SPECIES THEREON. FOR PURPOSES HEREOF, "ENVIRONMENTAL SUBSTANCES" MEANS THE FOLLOWING: (A) ANY "HAZARDOUS SUBSTANCE" AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION

AND LIABILITY ACT OF 1980, 42 U.S.C.A. SECTION 9601 ET. SEQ., AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER, (B) ANY "HAZARDOUS SUBSTANCE" UNDER THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, TEX. WATER CODE, SECTION 26.261, ET. SEQ., AS AMENDED, (C) PETROLEUM OR PETROLEUM-BASED PRODUCTS (OR ANY DERIVATIVE OR HAZARDOUS CONSTITUENTS THEREOF OR ADDITIVES THERETO), INCLUDING WITHOUT LIMITATION, FUEL AND LUBRICATION OILS, (D) ANY "HAZARDOUS CHEMICALS" OR "TOXIC CHEMICALS" UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT, 29 U.S.C.A. SECTION 651 ET SEQ., AS AMENDED, (E) ANY "HAZARDOUS WASTE" UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C.A. SECTION 6901 ET SEQ., AS AMENDED, (F) ASBESTOS, (G) POLYCHLORINATED BIPHENYLS, (H) UNDERGROUND STORAGE TANKS, WHETHER EMPTY, FILLED, OR PARTIALLY FILLED WITH ANY SUBSTANCE, (I) ANY SUBSTANCE, THE PRESENCE OF WHICH IS PROHIBITED BY FEDERAL STATE OR LOCAL LAWS AND REGULATIONS, AND (J) ANY OTHER SUBSTANCE WHICH BY FEDERAL, STATE OR LOCAL LAWS AND REGULATIONS REQUIRES SPECIAL HANDLING OR NOTIFICATION OF GOVERNMENTAL AUTHORITIES IN ITS COLLECTION, STORAGE, TREATMENT OR DISPOSAL. REFERENCES TO PARTICULAR ACTS OR CODIFICATIONS IN THIS DEFINITION INCLUDE ALL PAST AND FUTURE AMENDMENTS THERETO, AS WELL AS APPLICABLE RULES AND REGULATIONS AS NOW OR HEREAFTER PROMULGATED THEREUNDER.

TO HAVE AND TO HOLD the easement herein described and herein conveyed together with all and singular the rights and appurtenances thereto in any wise belonging unto Grantee and its assigns until terminated or abandoned; and Grantors do hereby bind themselves, their heirs, executors, administrators, successors and assigns to warrant and forever defend all and singular the said easement herein conveyed unto Grantee and its assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantors but not otherwise.

IN WITNESS WHEREOF, this instrument is executed on the dates acknowledged below.

CITY OF FORT WORTH
_____, City Manager

By: _____
Name: _____
Title: _____

Approved as to form:
Sarah Fullenwider, Fort Worth City Attorney

By: _____
Name: _____
Title: _____

Attest:

Ronald P. Gonzales, Acting City Secretary

CITY OF DALLAS
T.C. BROADNAX, City Manager

By: _____
Name: _____
Title: _____

Approved as to form:
Chris Caso, Dallas City Attorney

By: _____
Assistant City Attorney

Attest:

Biliera Johnson, City Secretary

Acknowledgment

State of Texas
County of Tarrant

This instrument was acknowledged before me on _____ by
_____, _____ of the City of Fort Worth, a
municipality, on behalf of said municipality.

Notary Public's Signature

Acknowledgment

State of Texas
County of Dallas

This instrument was acknowledged before me on _____ by
_____, _____ of the City of Dallas, a municipality,
on behalf of said municipality.

Notary Public's Signature

After recording please return this instrument to:

**Director of Real Estate
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266**