



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000

Fax: (972) 450-7043

AGENDA

WORK SESSION OF THE CITY COUNCIL

5:00 P.M. AT JERRY JUNKINS ELEMENTARY

2808 RUNNING DUKE DRIVE

CARROLLTON, TX 75006

AND

REGULAR MEETING OF THE CITY COUNCIL

OCTOBER 23, 2007

7:30 P.M.

TOWN HALL

5300 BELT LINE ROAD

ADDISON, TX 75001

WORK SESSION

Item #WS1- Tour of Jerry Junkins Elementary School, and presentation by and discussion with Edwin Flores, DISD Board of Trustees, regarding education matters.

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

October 8, 2007, Special Meeting Worksession and Executive Session
October 9, 2007, Worksession and Regular City Council Meeting

Item #R3 - Consideration and approval of a preliminary plat for Lot 1, Block 1, Opus Addition, being one tract of 3.371 acres, located in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle, on application from OPUS West Group, represented by Mr. Kyle Whitis of Pacheco Koch Consulting Engineers.

Attachments:

1. Docket map
2. Staff report
3. Plat

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 4, 2007, voted to recommend denial of the preliminary plat on application from OPUS West Corporation.

Voting Aye: Bernstein, Chafin, Daseke, Gaines, Jandura, Lay, Wood

Voting Nay: None

Absent: None

Administrative Comment:

The Commission recommended denial of the proposed plat on application for Lot 1, OPUS Addition based on the staff's recommendation that it did not accurately reflect all utilities that are located on the site, and that some of the lines that are proposed to be relocated were too close to other lines to allow for maintenance.

At the October 9, 2007, Council meeting, the applicant requested that the plat be tabled in order to give the applicant and the staff time to identify the utilities and relocate the proposed lines. Those items have been corrected, and the staff now recommends approval of the proposed plat.

Administrative Recommendation:

Administration recommends approval.

Item #R4 - Consideration and approval of the annual contract with the Dallas County Health Department for the Town of Addison for payment of \$5,751 based on expenses incurred in calendar year 2006, to participate in the cost of providing selected public health services at reduced prices to Addison residents.

Attachments:

1. Council Agenda Item Overview
2. Dallas County Health & Human Services Letter
3. Draft of Contract
4. Summary and Support Information

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Consideration and approval of a resolution in support of the Dallas Trinity Parkway Project which will be voted on during the November 6, 2007, election.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R6 - Consideration and approval of a supplemental agreement to the Engineering Services Agreement with Kimley-Horn and Associates, Inc., in an amount not to exceed \$21,000, for additional design services on the Traffic Signal System Upgrade project.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Consideration and approval of an ordinance of the Town of Addison, Texas, providing for the abandonment of a portion of a public utility easement on property referred to as the Millennium Phase II Subdivision, a tract of 3.5343 acres located at the northwest corner of Arapaho Road and Dallas Parkway, providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Consideration and approval of an award of a bid to StageLight, Inc., in the amount of \$28,892.00, for the purchase of a theatrical lighting console for the Addison Theatre Centre.

Attachments:

1. Council Agenda Item Overview
2. Bid Tabulation

Administrative Recommendation:

Administration recommends approval.

Item #R9 - Consideration and approval of a resolution approving an Interlocal Agreement with The Cooperative Purchasing Network for the purpose of cooperative purchasing.

Attachments:

1. Council Agenda Item Overview
2. Interlocal Agreement
3. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Consideration and approval of a resolution suspending the October 25, 2007, effective date of Atmos Energy Corp., Mid-Tex Division requested rate change, and, among other things, approving cooperation with Atmos Cities Steering Committee and other cities regarding legal and consulting services in connection with the requested rate change.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R11 - Discussion of proposed changes to the Town of Addison's Purchasing Manual.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R12 - Discussion regarding procedure for travel expenses.

Item #R13 - Discussion and consideration of an assignment of lease (and related option agreement) between the Town of Addison, as Landlord, and Amar Unlimited, Inc. d/b/a Clay Pit Grill & Curry House (4460 Belt Line Road), as Tenant, from Amar Unlimited to Twin City Hotels, LLC.

Attachments:

1. Council Agenda Item Overview
2. Business Plan
3. Lease Assignment – Ground
4. Lease Assignment – Improvements
5. Lease Documents
6. Option Contract
7. Lease Agreement (Exhibit to the Option Contract)

Item #R14 - Discussion regarding zoning and policing efforts at Addison Hotels.

Adjourn Meeting

Posted:
October 19, 2007 at 5:00 p.m.
Mario Canizares - City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

Council Agenda Item WS#1

There are no attachments for this Item.

OFFICIAL ACTIONS OF SPECIAL MEETING WORKSESSION`
AND CLOSED (EXECUTIVE) SESSION
OF THE CITY COUNCIL

October 8, 2007
7:00 P.M.
Town Hall
5300 Belt Line Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Absent: None

Special Meeting Worksession

Item #WS1 Discussion regarding a development proposal on a tract of 4.1 acres generally located within the Town of Addison at the southeast corner of Airport Parkway and Quorum Drive, and to amend a recently approved development plan for the said tract to provide for a waiver to design standards to allow composition shingles (David Weekly Homes, developer).

The discussion regarding a development proposal on a tract of 4.1 acres generally located within the Town of Addison at the southeast corner of Airport Parkway and Quorum Drive, and to amend a recently approved development plan for the said tract to provide for a waiver to design standards to allow composition shingles (David Weekly Homes, developer) was led by Carmen Moran.

Item #WS2 Discussion regarding a proposed final development plan, with waivers, for an office building located within the Town of Addison on a tract of 3.371 acres in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle (OPUS West Corporation, developer).

The discussion regarding a proposed final development plan, with waivers, for an office building located within the Town of Addison on a tract of 3.371 acres in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle (OPUS West Corporation, developer) was led by Carmen Moran.

Item #WS3 Discussion regarding a proposed change of zoning from A (Apartment) to PD (Planned Development) for eight tracts, and a change of zoning from PD-CC (Ordinance 828) to PD for one tract, and approval of development standards and a concept plan for all tracts, located within the Town of Addison on 99.176 acres in the Brookhaven Club neighborhood, bounded on the north by Spring Valley Road, on the east by the City of Farmers Branch, on the south by Brookhaven Community College and the City of Farmers Branch, and on the west by Marsh Lane (United Dominion Realty, developer).

The discussion regarding a proposed change of zoning from A (Apartment) to PD (Planned Development) for eight tracts, and a change of zoning from PD-CC (Ordinance 828) to PD for one tract, and approval of development standards and a concept plan for all tracts, located within the Town of Addison on 99.176 acres in the Brookhaven Club neighborhood, bounded on the north by Spring Valley Road, on the east by the City of Farmers Branch, on the south by Brookhaven Community College and the City of Farmers Branch, and on the west by Marsh Lane (United Dominion Realty, developer) was led by Carmen Moran.

Item #WS4 Discussion regarding development of certain land, including the construction of an office building, on approximately eight (8) acres of land located within the Town of Addison generally at the northwest corner of Arapaho Road and Dallas Parkway (Behringer-Harvard, developer).

The discussion regarding development of certain land, including the construction of an office building, on approximately eight (8) acres of land located within the Town of Addison generally at the northwest corner of Arapaho Road and Dallas Parkway (Behringer-Harvard, developer) was led by Carmen Moran.

Item #WS5 Discussion regarding a development proposal to construct an office building at Village on the Parkway located within the Town of Addison at 5100 Belt Line Road (Champion Partners, developer).

The discussion regarding a development proposal to construct an office building at Village on the Parkway located within the Town of Addison at 5100 Belt Line Road (Champion Partners, developer) was led by Carmen Moran.

Item #WS6 Discussion regarding a development proposal for approximately 83 townhomes located generally at the southwest corner of Belt Line Road and Commercial Drive (Ashton Woods, developer).

The discussion regarding a development proposal for approximately 83 townhomes located generally at the southwest corner of Belt Line Road and Commercial Drive (Ashton Woods, developer) was led by Carmen Moran.

There was no action taken on these items.

Closed (Executive) Session

Item #ES1 - Closed (executive) session of the Addison City Council, pursuant to Section 551.072 of the Texas Government Code, to deliberate the purchase, exchange, lease, or value of various tracts or parcels of real property located within the Town of Addison.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
WORK SESSION**

October 9, 2007
6:00 P.M. – Town Hall
5300 Belt Line Road
Upstairs Conference Room

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Absent: None

Work Session

Item #WS1 - Discussion regarding a proposed ground lease and non-public fuel farm license agreement with ExecHangar ADS, LC, on Addison Airport.

Bill Dyer led the discussion regarding a proposed ground lease and non-public fuel farm license agreement with ExecHangar ADS, LC, on Addison Airport.

There was no action taken on this item.

Item #WS2 - Discussion regarding a proposed ground lease and re-development with Encore FBO at Addison Airport.

Bill Dyer led the discussion regarding a proposed ground lease and re-development with Encore FBO at Addison Airport.

There was no action taken on this item.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR SESSION**

October 9, 2007
7:30 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Miguel Gutierrez with the Parks Department, Tony Barajas with the General Services Department and Michelle Holland with the Special Events Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

September 25, 2007, Regular City Council Meeting
September 28, 2007, Special Meeting and Worksession
October 1, 2007, Special Meeting and Worksession

The Minutes for the September 25, 2007, Regular City Council Meeting were approved with the following corrections:

Items #R14, #R15, #R16, #R17 – Change the word “motioned” to “moved” in each Item.

The Minutes for the September 28, 2007, Special Meeting and Worksession were approved as written.

The Minutes for the October 1, 2007, Special Meeting and Worksession, were approved as written:

Councilmember Kraft moved to duly approve Consent Agenda Item #2a, with the changes as noted for the September 25, 2007, Minutes.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R3 - Discussion and consideration of approval of the City Council liaison assignments to various community organizations.

Ron Whitehead presented this Item.

Councilmember Mellow moved to duly approve the City Council liaison assignments to various community organizations as follows:

Joe Chow:

- Metroplex Mayor's Association
- Metrocrest Chamber of Commerce
- North Texas Commission
- National League of Cities
- State & Federal Governments
-

Jimmy Niemann:

- Greater Dallas Planning Council
- Shakespeare Festival of Dallas
- The Family Place

Greg Hirsch:

- DART
- North Central Texas Council of Governments
- Metroplex Mayor's Association
- Tex-21
-

Tom Braun:

- Special Care & Career Services
- Dance Council
- Water Tower Theatre
- DART

Roger Mellow:

- Richardson Symphony Orchestra
- Senior Adult Services
- Metrocrest Family Medical Clinic
- Arbor Foundation
- Water Tower Theatre

Todd Meier:

- Communities in Schools Dallas
- Metrocrest Social Services
- Texas Municipal League
- DART

Dennis Kraft:

- Greater Dallas Chamber
- North Dallas Chamber
- Cavanaugh Flight Museum

Councilmember Meier seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann

Voting Nay: None

Absent: None

Item #R4 - Discussion and consideration of approval of the assignment of members of the City Council to further review and evaluate Citizens Advisory Committees recommendations.

Mayor Chow presented this Item.

Assignments to Citizens Advisory Committees were as follows:

Cotton Belt/DART -	Tom Braun, Greg Hirsch, Todd Meier
Enhance Communication -	Greg Hirsch, Dennis Kraft
Addison Comm. Foundation. -	Jimmy Niemann, Roger Mellow
Sustainability -	Jimmy Niemann, Tom Braun, Todd Meier
Inwood/Culinary District -	Tom Braun, Todd Meier
Education -	Greg Hirsch, Dennis Kraft
Performing & Visual Arts -	Tom Braun, Roger Mellow, Dennis Kraft
Cavanaugh Museum -	Jimmy Niemann, Roger Mellow
Business Development -	Jimmy Niemann, Todd Meier
Belt Line Redevelopment -	Greg Hirsch, Roger Mellow
Quality of Life -	Roger Mellow, Dennis Kraft

Mayor Chow recommended that one more screening process be added to pick Committee leaders that the Council believes are qualified to serve, and to discuss this at a later meeting. Mario Canizares will coordinate this screening process.

There was no action taken on this Item.

Councilmember Niemann recused himself for Item #R5 and left Council Chambers.

Item #R5 - **PUBLIC HEARING** (Case 1547-Z/OPUS West Corporation) regarding, and consideration of approval of an Ordinance approving, a final development plan, with waivers, for an office building located on a tract of 3.371 acres in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle, on application from OPUS West Group, represented by Mr. Brian Dotolo.

Mayor Chow opened the meeting as a public hearing.

There were no questions or comments.

Mayor Chow closed the meeting as a public hearing.

Councilmember Kraft moved to duly approve Ordinance 007-033 approving a final development plan, with waivers, for an office building located on a tract of 3.371 acres in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle, on application from OPUS West Group, represented by Mr. Brian Dotolo.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow

Voting Nay: None

Abstaining: Niemann

Item #R6 - Consideration of approval of a preliminary plat for Lot 1, Block 1, Opus Addition, being one tract of 3.371 acres, located in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle, on application from OPUS West Group, represented by Mr. Kyle Whitis of Pacheco Koch Consulting Engineers.

This Item was tabled without a motion until the next regularly scheduled Council Meeting on 10/23/07.

Councilmember Niemann returned to Council Chambers.

Item #R7 - **PUBLIC HEARING** (Case 1545-Z/United Dominion Realty) regarding, and consideration of approval of an Ordinance approving, a change of zoning from A (Apartment) to PD (Planned Development) for eight tracts, and a change of zoning from PD-CC (Ordinance 828) to PD for one tract, and approval of development standards and a concept plan for all tracts, located on 99.176 acres in the Brookhaven Club neighborhood, bounded on the north by Spring Valley Road, on the east by the City of Farmers Branch, on the south by Brookhaven Community College and the City of Farmers Branch, and on the west by Marsh Lane, on application from United Dominion Realty, represented by Mr. Bill Dahlstrom of Jackson Walker, LLP.

Mayor Chow opened the meeting as a public hearing.

There were no questions or comments.

Mayor Chow closed the meeting as a public hearing.

Councilmember Niemann moved to approve Ordinance No. 007-034, approving a change of zoning from A (Apartment) to PD (Planned Development) for eight tracts, and a change of zoning from PD-CC (Ordinance 828) to PD for one tract, and approval of development standards and a concept plan for all tracts, located on 99.176 acres in the Brookhaven Club neighborhood, bounded on the north by Spring Valley Road, on the east by the City of Farmers Branch, on the south by Brookhaven Community College and the City of Farmers Branch, and on the west by Marsh Lane, on application from United Dominion Realty, represented by Mr. Bill Dahlstrom of Jackson Walker, LLP, subject to final approval of the City Attorney.

Councilmember Meier seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R8 - Consideration and approval of a Resolution authorizing the City Manager to accept and enter into a Grant Agreement for Discretionary Funds from the Federal Aviation Administration administered by Texas Department of Transportation, for airport improvements to Addison Airport.

Councilmember Braun moved to duly approve Resolution R07-022, authorizing the City Manager to accept and enter into a Grant Agreement for Discretionary Funds from the Federal Aviation Administration administered by Texas Department of Transportation, for airport improvements to Addison Airport.

Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R9 - Consideration and approval is requested to enter into a contract with Channel 3 Productions in the amount of \$41,824.98 to produce an Addison Video.

Councilmember Kraft moved to duly approve to enter into a contract with Channel 3 Productions in the amount of \$41,824.98 to produce an Addison Video.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R10 - Consideration of an Ordinance amending Section 67-20(a) of the Town's Code of Ordinances regarding the issuance of a permit for a restaurant/retail promotional event and special event held within the Town.

Councilmember Niemann moved to duly approve Ordinance 007-035, amending Section 67-20(a) of the Town's Code of Ordinances regarding the issuance of a permit for a restaurant/retail promotional event and special event held within the Town.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow, Niemann
Voting Nay: None
Absent: None

There being no further business before the Council, the meeting was adjourned.

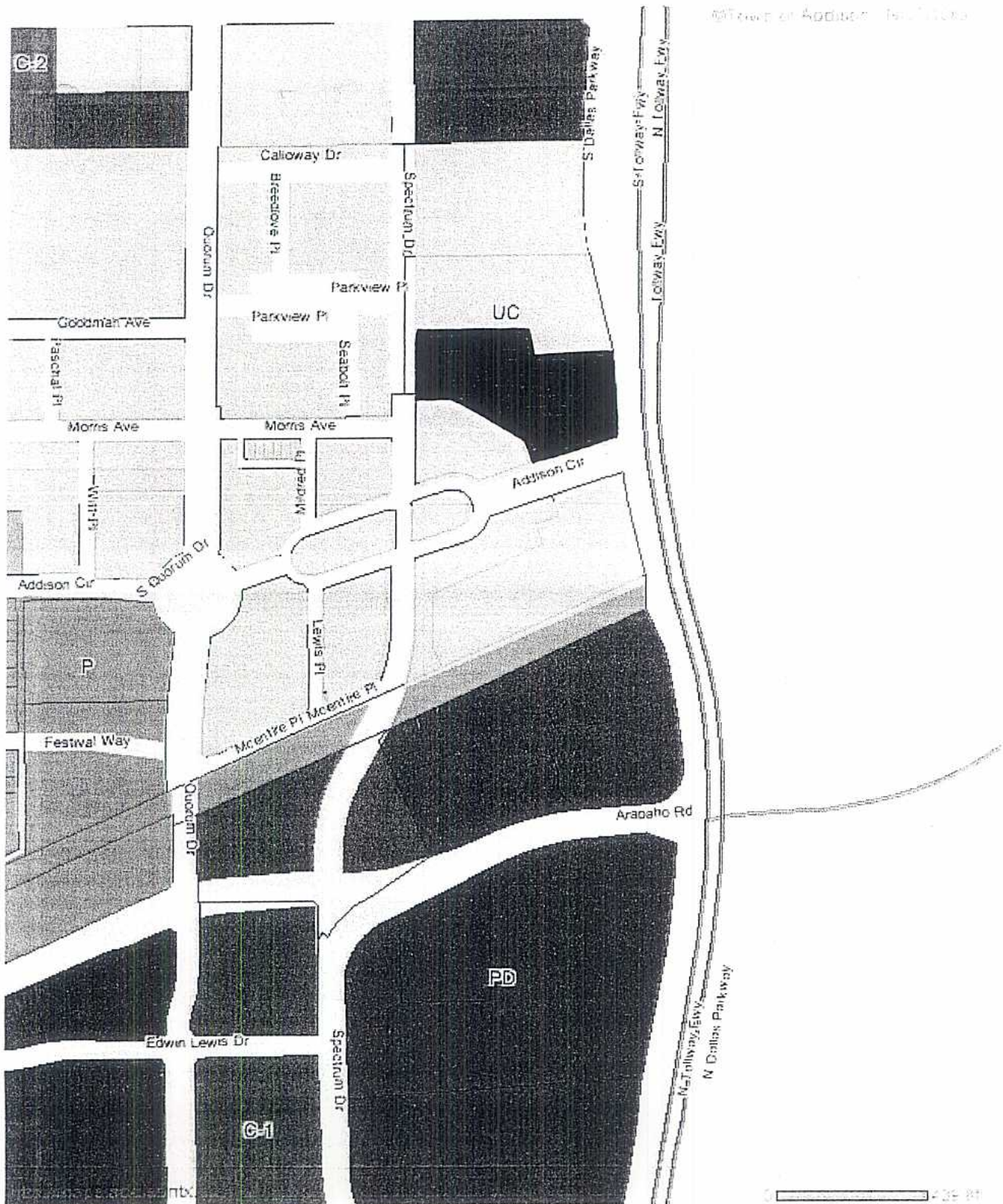
Mayor

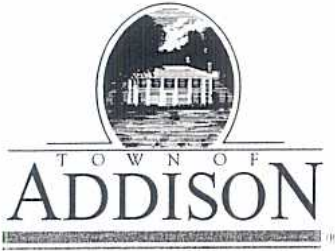
Attest:

City Secretary

Preliminary Plat/Lot 1, Block 1, Opus Addition

PRELIMINARY PLAT/Lot 1, Block 1, Opus Addition. Requesting approval of a preliminary plat for one tract of 3.371 acres, located in the Urban Center District – Commercial sub-district, on the northwest corner of Dallas Parkway and Addison Circle, on application from OPUS West Group, represented by Mr. Kyle Whitis of Pacheco Koch Consulting Engineers.





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 26, 2007

STAFF REPORT

RE: PRELIMINARY PLAT/Lot 1,
Block I, Opus Addition

LOCATION: One lot on 3.371 acres, located in
the Urban Center District,
Commercial sub-district, on the
northwest corner of the
intersection of Dallas Parkway
and Addison Circle

REQUEST: Approval of a preliminary plat

APPLICANT: OPUS West Group, represented
by Mr. Kyle Whitis of Pacheco
Koch Consulting Engineers.
represented by Mr. Josh Lambert

DISCUSSION:

Background. This tract is planned to be developed with a 210,000 square foot office building (Case 1547-Z/OPUS West Corporation). The staff is currently reviewing plans for the office building, which is to be located within the Addison Circle neighborhood.

Public Works Review. Public Works reviewed the proposed plat and development, and notes the following:

1. Spectrum is classified as a minor arterial in the Town of Addison Transportation Plan which requires 200' driveway spacing. The current driveway opening into the parking garage is directly adjacent to the driveway for the SNK parking garage to the north of this development. If the driveway could be pushed to the center drive aisle of the parking garage, it would provide 80' spacing between the SNK driveway and the proposed driveway and would leave 100' between the Aventura driveway and the proposed driveway.
2. The existing entrance off of Addison Circle does not align with the

- proposed drive for the development. It appears that a small easement may be needed from Aventura. This issue needs to be resolved promptly.
3. The eastern row of trees along Dallas Parkway restricts visibility for drivers turning southbound on Dallas Parkway from Addison Circle.
 4. Adequate space may not be available for the utilities as shown along Dallas Parkway. A plan that has sufficient space for maintaining the public utilities needs to be presented prior to approval of the zoning case.

These comments reflect concerns with both the plat and the site plan. The staff is working with OPUS West to get the items resolved, but staff believes there are additional utilities, both public and private, that are not reflected on this plat, but are in the ground along Dallas Parkway. These utilities, if not located, could cause the applicant to have to move the building after he has spent thousands of dollars on design and engineering.

Staff is working with the applicant on getting the utilities located and identified. The staff has advised the applicant that it will recommend denial of the plat, but will consider a revised preliminary plat as soon as the utilities can be located and a revised plat can be submitted.

RECOMMENDATION:

Staff does not believe the preliminary plat meets the requirements of the subdivision ordinance in that it does not accurately reflect all utilities that are located on the site. In addition, some of the lines that are proposed to be relocated are too close to other lines to allow for maintenance.

Staff recommends denial of the proposed preliminary plat.

Respectfully submitted,



Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 4, 2007, voted to recommend denial of the preliminary plat on application from OPUS West Corporation.

Voting Aye: Bernstein, Chafin, Daseke, Gaines, Jandura, Lay, Wood

Voting Nay: None

Absent: None

Council Agenda Item: #R4

SUMMARY:

Annual contract with the Dallas County Health Dept. for the Town of Addison to participate in the cost of providing selected public health services at reduced prices to Addison residents.

FINANCIAL IMPACT:

Budgeted Amount: \$5,751

Cost: \$5,751

If over budget or not budgeted, what is the budget impact?

N/A

BACKGROUND:

Being that the Town of Addison does not offer public health services in-house (i.e. immunizations, sexually transmitted disease screening, etc.), we enter into an annual contract with the Dallas County Health Dept. to make available and defray some of the costs of certain health services for less fortunate residents. Find attached a cover letter from Dallas County and a draft contract obligating the Town of Addison for payment of \$5,751 based on expenses incurred in calendar year 2006. Be informed that contract language and cost are identical to last year.

Also find attached a historical summary of past contracts and several addendums relevant to this year's contract.

RECOMMENDATION:

Staff recommends approval



DALLAS COUNTY
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION

#R4

ZACHARY THOMPSON
DIRECTOR

August 29, 2007

Honorable Joe Chow
Mayor of the Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

Dear Mayor Chow:

Enclosed please find the **FY'08** contract for **Health Services** between your city and the Dallas County Department of Health and Human Services. The contract cost is based on the FY'07 contract amount.

Please present this contract to your city council for their approval and return both signed copies to Dallas County Department of Health and Human Services. If our services are required in presenting the agreement to your council, we will be more than happy to assist you. Also enclosed is a copy of the **FY'08 Exhibits A, B, C, and D**. If you would like to receive an electronic version of the FY'08 contract for Health Services, please email Pamela Dorrough at pdorrough@dallascounty.org. Thank you for your continued support for quality health care for the citizens of Dallas County.

Should you have any questions, please feel free to contact Denise Cherry at (214) 819-2104.

Sincerely,


Zachary Thompson
Director

enclosures

xc: Denise Cherry, Program Monitor

<p>THE STATE OF TEXAS</p> <p>COUNTY OF DALLAS</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>AGREEMENT BETWEEN DALLAS COUNTY, ON BEHALF OF DALLAS COUNTY HEALTH AND HUMAN SERVICES, AND THE TOWN OF ADDISON, TEXAS</p>
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1. PARTIES

Whereas, Dallas County (“County”) has offered to provide certain health services to the various cities throughout Dallas County on a contract for services basis; and

Whereas, the Town of Addison, Texas (“Town”) desires to participate with County in establishing coordinated health services for Town and County; and

Whereas, County will operate certain health services for the residents of Town in order to promote the effectiveness of local public health programs; and

Whereas, the cooperative effort will allow cities located within Dallas County to participate in providing public health services for their residents; and

Whereas, such cooperative effort serves and further the public purpose and benefit the citizens of County as a whole.

Now therefore, County, on behalf of Dallas County Health and Human Services (“DCHHS”), enters into this Agreement (“Agreement”) with Town, pursuant to the authorities of the Texas Health and Safety Code Chapter 121, the Texas Government Code Chapter 791, and other applicable laws for health services to Town.

2. HEALTH SERVICES TO BE PERFORMED

A. County agrees to operate the Dallas County Health Services Program ("Program"), which will include the following health services:

- 1) Tuberculosis Control Services: providing preventive, diagnostic treatment, and epidemiological services;
- 2) Sexually Transmitted Disease Control Services: consisting of education to motivate people to use preventive measures and to seek early treatment, prophylaxis, epidemiological investigation, and counseling in accordance with County policy;
- 3) Communicable Disease Control Services: providing information concerning immunization and communicable diseases and coordinating with the Texas Department of State Health Services (“DSHS”) in monitoring communicable diseases;

4) Laboratory Services: performing chemical, biological, and bacteriological analysis and tests on which are based diagnosis of disease, effectiveness of treatment, the quality of the environment, the safety of substance for human consumption, and the control of communicable disease;

B. County agrees to provide to Town, in accordance with state and federal law, the following public health services:

- 1) Immunizations;
- 2) Child health care;
- 3) High risk infant case management; and
- 4) Home visits.

County also agrees to work with Town in order to decentralize clinics and to plan and provide for desired services by Town; however, any other services that Town requires, in addition to the above mentioned services, may result in additional fees to Town.

C. County agrees to charge a sliding fee based on ability to pay to all residents of every municipality, including Town, in Dallas County. The fees charged by County for the services listed in Section 2A of this Agreement will be used to offset the Town's Program costs for the next Agreement Term. A schedule of fees to be charged by County is set out in "Exhibit A" attached hereto and incorporated herein for all purposes.

D. County agrees that the level of service provided in the Program for Town will not be diminished below the level of service provided to Town for the same services in the prior Agreement Term except as indicated in Section 2E of this Agreement. For purposes of Section 2E, level of service is measured by the number of patient visits and number of specimens examined. County will submit to Town a monthly statement, which will also include the number of patient visits and number of specimens examined during the preceding month.

E. The possibility exists of reductions in state and federal funding to the Program that could result in curtailment of services if not subsidized at the local level. County will notify Town in writing of any amount of reduction, and any extent to which services will be curtailed as a result. The notice will also include an amount that Town may elect to pay to maintain the original level of services. Town will notify County in writing no later than fourteen (14) calendar days after the date of Town's receipt of the notice of funding reduction as to Town's decision to pay the requested amount or to accept the curtailment of service. If Town elects to pay the requested amount, payment is due no later than forty-five (45) calendar days after the date of the notice of funding reduction.

3. BUDGET

- A. County agrees to submit to Town by July 31st of each year a proposed budget describing the proposed level of services for the next Agreement Term;
- B. For the Term of this Agreement County agrees to provide the services listed in Section 2 of this Agreement at the level of services and for the amount stated in Exhibit D, which is attached hereto and incorporated herein for all purposes;
- C. Town shall pay to County for the Term of this Agreement the amount stated in Exhibit D, **Five Thousand Seven Hundred Fifty One Dollars and Zero Cents (\$5,751.00)**, which is the agreed upon amount of Town's share of the total cost of the Program less federal and state funding.
- D. In lieu of paying the actual dollar amount stated in this Agreement, Town has the option, to the extent authorized by law, ordinances or policy, of making a request to negotiate for in-kind services that are equal in value to the total amount.
- E. This Agreement is contingent upon Town's appropriation of funds, or ability to perform in-kind services as described in Section 3D of this Agreement, for the services set forth herein. In the event Town fails to appropriate such funds, or provide in-kind services, County shall not incur any obligations under this Agreement.

4. ASSURANCES

- A. County shall operate and supervise the Program.
- B. Nothing in this Agreement shall be construed to restrict the authority of Town over its health programs or environmental health programs or to limit the operations or services of those programs.
- C. Town agrees to provide to County or assist County in procuring adequate facilities to be used for the services under this Agreement. These facilities must have adequate space, waiting areas, heating, air conditioning, lighting, and telephones. None of the costs and maintenance expenses associated with these facilities shall be the responsibility of County and County shall not be liable to Town or any third party for the condition of the facilities, including any premise defects.
- D. Town and County agree that other cities/towns/municipalities may join the Program by entering into an agreement with County that contains the same basic terms and conditions as this Agreement.
- E. Each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

5. FINANCING OF SERVICES

- A. The health services provided under this Agreement will be financed as follows:

- 1) Town and County will make available to the Program all appropriate federal and state funds, personnel, and equipment to provide the health services included under this Agreement and will use best efforts to cause these funds and resources to continue to increase.
 - 2) Town shall pay to County, or provide in-kind services, its share of budgeted costs that are in excess of the federal and state funding for providing the health services under this Agreement. Budgeted costs shall not exceed those reflected in Exhibit D for the appropriate Agreement Term.
- B. Town has elected to pay to County a lump sum payment for the Term the amount stated in Exhibit D.
- C. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- D. Town and County agree that no more than ten percent (10%) of the Town's cost of participating in the Program will be used for administration of the Program.

6. TERM

This Agreement shall be effective from October 1, 2007 through September 30, 2008 ("Term"), unless otherwise stated in this Agreement.

7. TERMINATION

- A. Without Cause: This Agreement may be terminated in writing, without cause, by either party upon thirty (30) calendar days prior written notice to the other party.
- B. With Cause: Either party may terminate the Agreement immediately, in whole or in part, at its sole discretion, by written notice to the other party, for the following reasons:
- 1) Lack of, or reduction in, funding or resources;
 - 2) Non-performance;
 - 3) The improper, misuse or inept use of funds or resources directly related to this Agreement;
 - 4) The submission of data, statements and/or reports that is incorrect, incomplete and/or false in any way.
- C. In the event of any such termination, County shall refund to Town a pro-ratable portion of Town's lump sum payment made to County hereunder in accordance with the following formula: Amount of Town's Payment x Number of Months Remaining in Fiscal Year

(excluding the month of termination) ÷ 12.

8. RESPONSIBILITY

County and Town agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any governmental immunity available to County or Town or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

9. INSURANCE

Town and County agree that they will, at all times during the Term of this Agreement, maintain in full force and effect insurance or self-insurance to the extent permitted by applicable laws. Town and County will be responsible for their respective costs of such insurance, any and all deductible amounts in any policy and any denials of coverage made by their respective insurers.

10. ACCESS TO RECORDS RELEVANT TO PROGRAM

Town and County agree to provide to the other upon request, copies of the books and records relating to the Program. Town and County further agree to give Town and County health officials access to all Program activities. Both Town and County agree to adhere to all applicable confidentiality provisions, including those relating to Human Immunodeficiency Virus (HIV) and Sexually Transmitted Disease (STD) information, as mandated by federal and State law, as well as by DSHS.

11. NOTICE

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person by a reputable courier service or mailed by Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given, if by courier, at the time of delivery, or if by mail, three (3) business days subsequent to the deposit of the notice in the United States mail in accordance herewith. The names and addresses of the parties' hereto to whom notice is to be sent are as follows:

Zachary Thompson, Director
Dallas County Health & Human Services
2377 N. Stemmons Freeway, LB 12
Dallas, TX 75207-2710

Mario Canizares, Town Secretary
Town of Addison
PO. Box 9010
Addison, TX 75001-9010
(972) 450-2881

12. IMMUNITY

This Agreement is expressly made subject to County's and Town's Governmental Immunity,

including, without limitation, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state laws. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability, or a waiver of any tort limitation, that Town or County has by operation of law or otherwise. Nothing in this Agreement is intended to benefit any third party beneficiary.

13. COMPLIANCE WITH LAWS AND VENUE

In providing services required by this Agreement, Town and County must observe and comply with all licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, State, and local statutes, ordinances, rules, and regulations. Texas law shall govern this Agreement and exclusive venue shall lie in Dallas County, Texas.

14. AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

15. ENTIRE AGREEMENT

This Agreement, including all Exhibits and attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written.

16. BINDING EFFECT

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

17. GOVERNMENT FUNDED PROJECT

If this Agreement is funded in part by either the State of Texas or the federal government, County and Town agree to timely comply without additional cost or expense to the other party, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement.

18. DEFAULT/CUMULATIVE RIGHTS/MITIGATION

In the event of a default by either party, it is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by

this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Both parties have a duty to mitigate damages.

19. FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained herein, the obligations of County and Town under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the Term of the Agreement and any extensions thereto. Town and County shall have no right of action against the other party in the event the other party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future Agreement Terms. In the event that County or Town is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, each party, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to the other party at the earliest possible time.

20. COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

21. PREVENTION OF FRAUD AND ABUSE

Town and County shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving County or Town's employees or agents shall be reported immediately for appropriate action. Moreover, Town and County warrant to be not listed on a local, county, State or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Town and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Each party shall, upon notice by the other party, refund their respective expenditures that are contrary to this Agreement.

22. AGENCY / INDEPENDENT CONTRACTOR

County and Town agree that the terms and conditions of this Agreement do not constitute the creation of a separate legal entity or the creation of legal responsibilities of either party other than under the terms of this Agreement. County and Town are and shall be acting as independent

contractors under this Agreement; accordingly, nothing contained in this Agreement shall be construed as establishing a master/servant, employer/employee, partnership, joint venture, or joint enterprise relationship between County and Town. Town and County are responsible for their own acts, forbearance, negligence and deeds, and for those of their respective officials, agents or employees in conjunction with the performance of work covered under this Agreement.

23. SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

24. SIGNATORY WARRANTY

Each person signing and executing this Agreement does hereby warrant and represent that such person has been duly authorized to execute this Agreement on behalf of Town or County, as the case may be.

The Town of Addison has executed this Agreement pursuant to duly authorized Town Council Resolution No. _____, dated _____, 20____. The County of Dallas has executed this Agreement pursuant to Commissioners Court Order No. 2007 1727, dated August 28, 2007.

Executed this _____ day of _____ 2007.

COUNTY:

TOWN:

By: Jim Foster
Dallas County Judge

By: Ron Whitehead
City Manager

Recommended:

By: Zachary Thompson
Director, DCHHS

By: Mario Canizares
City Secretary

Approved as to Form*:

By: Bob Schell
Chief, Civil Division
Assistant District Attorney

By: John Hill
City Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

**FY'2008 FEE SCHEDULE
EXHIBIT A**

#R4

SEXUALLY TRANSMITTED

Treatment	\$20 - \$45 (Sliding Scale)
Blood Drawing	\$5
Cryosurgery (F)	\$60
Cryosurgery (M)	\$50
Chemical Lesion Reduction	\$45
Medical Records Copies	\$5 each

TUBERCULOSIS

TB Testing-Level I (PPD)	\$25
TB Testing-Level II (Quantiferon)	\$50
Chest X-Ray Copies	\$5

LABORATORY

Wet Prep	\$6 each
Gram Stain	\$6 each
GC Culture	\$14 each
RPR	\$11 each
GEN Probe GC Screen	\$47 each
GEN Probe CT Screen	\$47 each
HIV Test	\$15 each
HIV Test - Rapid	\$20 each
Salmonella/Shigella	\$16 each
TB Culture & Concentration	\$25 each
TB Identification	\$15 each
TB Susceptibility	\$31 each
TB Acid Fast Stain	\$ 8 each

NURSING SERVICE

Hepatitis A Havrix	\$45/Injection
Hepatitis B Vaccine	\$150/Series
Twinrix	\$60/Injection
HDCV (IM) Rabies	\$540/Series
HDCV (ID) Rabies	\$270/Series
Hepatitis C Screening	\$35/Test
Japanese Encephalitis	\$330/Series
Meningococcal Vaccine	\$110/Injection
Typhoid (Polysaccharide)	\$60/Injection
Typhoid (Oral)	\$45/box
Varivax	\$85/Injection
Yellow Fever Vaccine	\$85/Injection
Boostrix Vaccine	\$45/Injection
HIB	\$35/injection
Adacel (Pertusis)	\$50/injection
Rabies Administrative Fee/ Serves State Vaccine	\$25
Foreign Travel Office Visit Fee	\$25

ENVIRONMENTAL HEALTH

Septic Tank Inspection	#\$310/Commercial/Business #\$260/Residential
Septic Tank Re-inspection	\$35/Residential
	\$85/Commercial
Food Establishment Inspection	\$150/yr./establishment
Half-Way Houses & Boarding Homes, Residential	\$75/plus \$25 for each additional unit on site
Mosquito Spraying for Non- contracting cities	\$185/ per hour
Water Sample	\$50
Mosquito Testing	\$35
Food Mgr. Cert. Program	\$85/per person

CRIMINAL TESTING

Blood Draws	\$38
Buccal Swabs	\$38

Comprehensive TB Testing & Evaluation (Incl. Chest X-ray)	\$60
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Pregnancy Test	\$15 each
Urinalysis	\$15 each
Dark Field	\$16 each
Chancroid Culture	\$10 each
Herpes Culture	\$38 each
Herpes Type 1 & 2 Serology	\$35 each
Group A Strep	\$14 each

<i>Urine Screen:</i>	
Neisseria Gonorrhoeae	\$47 each
Chlamydia Trachomatis	\$47 each
Lead Screen	\$10 each
Staphylococcus/Aureus Culture	\$17 each

<i>Immunization/VFC Program:</i>	
DPT,DT,Hib,	\$5/Per child
Diabetic Testing	\$5/Test
Pneumococcal	\$40/Injection
Influenza Vaccine	\$20/Injection
MMR	\$55/Injection
TD	\$30/Injection
IPV	\$40/Injection
Menactra	\$110/Injection
Zostavax (Shingles)	\$160.00/Injection
Gardasil (HPV)	\$140.00/Injection
Well Baby	\$5/Visit

<i>Records:</i>	
Immunization Record	\$5 each
Foreign Travel Yellow Card	\$3 each

Day Care Center Inspections	\$2/per authorized child
Temporary Food Permit	\$75/plus \$10 per day
Funeral Home Inspection	\$200
FHA, VA, Conventional Loans	\$125/Licensed \$150/Unlicensed
Annual Group Home Inspection	\$50
Food Handler Class	\$15/per person
Sub-division Plat Approval	\$200/Residential
	\$150/Commercial
Animal Control/Quarantine	\$7/per day
Animal Control/Vicious Animal	\$12/per day

Note: 1) # Indicates \$10 charge for State fee

January, 2006 thru December, 2006

<i>Municipality</i>	<i>Tuberculosis</i>	<i>Sexually Transmitted Diseases</i>	<i>Laboratory</i>	<i>Communicable Disease</i>
<i>Addison</i>	465	56	408	171
<i>Balch Springs</i>	310	94	320	265
<i>Carrollton</i>	963	207	1398	883
<i>Cedar Hill</i>	661	165	259	386
<i>Cockrell Hill</i>	130	0	6	226
<i>Coppell</i>	173	24	30	529
<i>Dallas</i>	31039	10821	52736	28396
<i>Desoto</i>	594	284	268	722
<i>Duncanville</i>	489	158	429	648
<i>Farmers Branch</i>	488	83	441	407
<i>Garland</i>	2956	633	4913	2579
<i>Glenn Heights</i>	50	43	11	68
<i>Grand Prairie</i>	1408	334	2848	1468
<i>Highland Park</i>	4	0	0	90
<i>Hutchins</i>	13	33	111	22
<i>Irving</i>	2522	742	4866	2347
<i>Lancaster</i>	486	301	840	584
<i>Mesquite</i>	1311	389	3264	1690
<i>Richardson</i>	1172	187	1200	1234
<i>Rowlett</i>	169	58	169	412
<i>Sachse</i>	41	9	38	171
<i>Seagoville</i>	163	44	198	141
<i>Sunnyvale</i>	3	1	0	39
<i>University Park</i>	0	0	48	115
<i>Wilmer</i>	56	22	2243	56
<i>Out of County</i>	855	1197	88574	7344
Total	46521	15885	165618	50993

DALLAS COUNTY HEALTH & HUMAN SERVICES

EXHIBIT C

FY '08

Municipality	TB Clinic	STD Clinic	Public Health Lab	Communicable Disease Control		FY '08 Contract Total
Addison	12,651	5,113	3,473	1,570	5,751	
Balch Springs	8,434	8,582	2,724	2,433	9,377	
Carrollton	26,201	18,898	11,901	8,105	23,823	
Cedar Hill	17,984	15,064	2,205	3,543	2,498	
Cockrell Hill	3,537	0	51	2,075	2,301	
Coppell	4,707	2,191	255	4,856	3,131	
Dallas	844,492	987,907	448,942	260,656	1,754,252	
Desoto	16,161	25,928	2,281	6,627	17,620	
Duncanville	13,304	14,425	3,652	5,948	11,273	
Farmers Branch	13,277	7,578	3,754	3,736	6,856	
Garland	80,425	57,790	41,824	23,674	80,156	
Glenn Heights	1,360	3,926	94	624	574	
Grand Prairie	38,308	30,493	24,245	13,475	38,854	
Highland Park	109	0	0	826	132	
Hutchins	354	3,013	945	202	3,149	
Irving	68,617	67,741	41,424	21,544	81,906	
Lancaster	13,223	27,480	7,151	5,361	12,106	
Mesquite	35,669	35,514	27,786	15,513	31,608	
Richardson	31,887	17,072	10,216	11,327	23,756	
Rowlett	4,598	5,295	1,439	3,782	4,925	
Sachse	1,116	822	323	1,570	362	
Seagoville	4,435	4,017	1,686	1,294	6,440	
Sunnyvale	82	91	0	358	99	
University Park	0	0	409	1,056	48	
Wilmer	1,524	2,008	19,095	514	2,597	
Out of County	23,262	109,281	754,031	67,413	77,142	
	\$1,265,718	\$1,450,227	\$1,409,907	\$468,082	\$2,200,736	

EXHIBIT D

FY'08 CONTRACT COSTS

MUNICIPALITIES	CONTRACT COST
ADDISON	\$5,751
BALCH SPRINGS	\$9,377
CARROLLTON	\$23,823
CEDAR HILL	\$2,498
COCKRELL HILL	\$2,301
COPPELL	\$3,131
* DALLAS	\$1,754,252
* DESOTO	\$17,620
* DUNCANVILLE	\$11,273
FARMERS BRANCH	\$6,856
* GARLAND	\$80,156
GLENN HEIGHTS	\$574
GRAND PRAIRIE	\$38,854
HIGHLAND PARK	\$132
HUTCHINS	\$3,149
IRVING	\$81,906
LANCASTER	\$12,106
* MESQUITE	\$31,608
* RICHARDSON	\$23,756
ROWLETT	\$4,925
SACHSE	\$362
* SEAGOVILLE	\$6,440
SUNNYVALE	\$99
UNIVERSITY PARK	\$48
* WILMER	\$2,597
* UNINCORPORATED	\$77,142
TOTAL	\$2,200,736

#R4

CONTRACTS WITH DALLAS CO. FOR PUBLIC HEALTH SERVICES

(Contract amounts based on usership during previous calendar year)

<u>Fiscal Year</u>	<u>99-00</u>	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>
<u>Contract Amt.</u>	\$6,776	\$5,751	\$5,751	\$5,751	\$5,751	\$5,751	\$5,751	\$5,751	\$5,751

<u>Cal yr</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
STD	27	47	43	37	80	56	72	61	56
TB	247	25	199	85	179	102	200	377	465
LAB	236	242	197	301	280	367	346	318	408
COM DIS	249	127	276	172	127	97	10	153	171

STD - sexually transmitted diseases

TB - tuberculosis

LAB - laboratory services

COMM DIS - communicable diseases

Council Agenda Item: #R5

SUMMARY:

Request to approve a resolution in support of the Dallas Trinity Parkway Project, to be voted on during the November 6, 2007 election.

FINANCIAL IMPACT:

None

BACKGROUND:

In 1994, Dallas Mayor Steve Bartlett created the Trinity River Corridor Citizens Committee (TRCCC), a 400-member group designed to study and report on how to best approach revitalization of the Trinity River area. In 1998, Dallas voters approved a bond initiative in response to that report which would become the Trinity Parkway Project. After nearly ten years of preparation, the Dallas City Council is ready to begin construction. However, one council member, Angela Hunt, representing District 14, has expressed concern in putting a tollway through the location of a future park in the region. She has gained enough momentum to petition for a referendum on the issue.

On November 6, 2007, Dallas voters will be asked to decide on the future of the Trinity Parkway Project. A vote of "No" – against the Angela Hunt plan – will allow construction to begin on much needed flood protection, lakes, parks, recreation areas, and transportation improvements, including a 6-lane reliever route into downtown Dallas.

A vote of "Yes" will halt the commencement of the project and will require at least five more years of discussion and planning before moving forward.

RECOMMENDATION:

Staff recommends that Council approve this resolution in favor of the project.

#R5

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, IN SUPPORT OF THE CITY OF DALLAS' TRINITY PARKWAY PROJECT.

WHEREAS, the Trinity Parkway project has been planned and evaluated for over a decade; and

WHEREAS, in 1998 the voters of Dallas approved \$246 million in bond funds to transform the Trinity River corridor into a sustainable system of parks, athletic fields, transportation facilities, and flood control improvements; and

WHEREAS, in 2003 Dallas City Council and community leaders affirmed the Balanced Vision Plan as the most economical and viable plan to relieve congestion and enhance the quality of life for those that commute to, from and through Dallas; and

WHEREAS, the Trinity Project has regional significance and is a vital component of the transportation system in and around Dallas, directly influencing the future of the Pegasus Project (Dallas mixmaster congestion relief) and the Southern Gateway Project (widening of U.S. Highway 67 and I-35E south of Dallas); and

WHEREAS, the Trinity Project will contribute to continued improvement in air quality and preservation of our natural resources; and

WHEREAS, Addison has strong partnership with the City of Dallas and shares in Dallas' vision for a strong economy, efficient transportation, and responsible stewardship of our natural resources,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS: That we support the leaders and citizens of Dallas and encourage the voters in Dallas to "Save the Trinity" and vote "**No**" on City of Dallas Proposition 1 for the November 6, 2007 election. We further encourage our citizens to personally encourage friends and coworkers in Dallas to share in the vision for the Trinity Project and vote "**No**" in order to "Save the Trinity."

PASSED AND ADOPTED this 23rd day of October 2007.

Joe Chow, Mayor

ATTEST:

Mario Canizares, City Secretary

Council Agenda Item #R6

SUMMARY:

This item is for the approval of a supplemental agreement to the Engineering Services Agreement with Kimley-Horn and Associates, Inc., in an amount not to exceed \$21,000, for additional design services on the Traffic Signal System Upgrade project.

FINANCIAL IMPACT:

Current Design/Inspection Contract Amount: \$ 196,534.54

Additional Design/Inspection Cost: \$ 21,000.00

Source of Funds: un-allocated street bond funds

BACKGROUND:

The Traffic Signal Upgrade Project was originally designed to include a 900 MHZ Radio System communication system. It included upgrading the Town's controllers so that all 35 would have current technology once the project is complete. Town staff would prefer to have a communications technology installed that would provide Ethernet expandability. While there are additional costs now the Town believes that the technology will be expanded in the future and ultimately function for a longer period of time, thereby reducing expense and limiting waste.

The design of the Traffic Signal Upgrade Project is underway and is expected to be complete in the spring of 2008. The Town is receiving federal funding from NCTCOG through TxDOT for this project. TxDOT will review the plans and advertise and award the bid. Dallas County is contributing \$196,000 towards the construction of the traffic signal upgrade project.

Kimley-Horn and Associates has submitted a contract amendment request for \$21,000 to perform design revisions to include the Ethernet communication system and staff requests this amount be authorized.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a supplemental agreement to the Engineering Services Agreement with Kimley-Horn and Associates, Inc., in the amount not to exceed \$21,000.00, for additional design on the Traffic Signal Upgrade Project.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS PROVIDING FOR THE ABANDONMENT OF A PORTION OF A PUBLIC UTILITY EASEMENT ON PROPERTY REFERRED TO AS THE MILENNIUM PHASE II SUBDIVISION, A TRACT OF 3.5343 ACRES LOCATED AT THE NORTHWEST CORNER OF ARAPAHO ROAD AND DALLAS PARKWAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, a tract of land known as the Millennium Phase II Subdivision was the subject of a plat filed of record in Volume 98221, Page 00022, Real Property Records, Dallas County, Texas (copy attached as Exhibit 1 and incorporated herein); and

WHEREAS, the plat of the Millennium Phase II Subdivision reflected an approximately 25 foot utility easement, recorded by separate instrument, Volume 81075, Page 1696, Real Property Records, Dallas County, Texas, dedicated to public utility use which runs the length of the property and parallel to the south property line; and

WHEREAS, the current owner of the property desires to construct a building which will slightly encroach into the public utility easement (copy of attached as Exhibit 2); and

WHEREAS, there presently exist no water, sanitary sewer, or storm water lines within the public utility easement; and

WHEREAS, Section 272.001, Tex. Loc. Gov. Code, authorizes the release and abandonment of the Easement Portion to the adjacent owner; and

WHEREAS, the City Council of the Town of Addison, Texas, acting pursuant to law, deems it advisable to abandon the Easement Portion which is no longer needed for public use, and said property should be abandoned, relinquished and vacated to the adjacent landowner.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein for all purposes.

Section 2. Abandonment. The Town of Addison does hereby abandon, relinquish and vacate the Easement Portion described and depicted in Exhibit 2 to the adjacent landowner. The Town reserves all authority and rights it has in the public utility easement not abandoned by this Ordinance.

Section 3. Extent of Abandonment. The abandonment provided herein shall apply to the public right, title, easement and interest that the Town of Addison may lawfully abandon, vacate and relinquish. The Town of Addison makes no warranty as to title to the land abandoned.

Section 4. Recording. The City Secretary is hereby directed to certify a copy of this Ordinance and cause it to be recorded in the Deed Records of Dallas County, Texas.

Section 5. Effective Date. This Ordinance shall take effect immediately upon passage and it is so ordained.

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

Mayor
Town of Addison, Texas

ATTEST:

City Secretary
Town of Addison, Texas

APPROVED AS TO FORM:

City Attorney
Town of Addison, Texas

Council Agenda Item: #R7

DEPARTMENT:
Public Works

SUMMARY:
Consideration of the adoption of an Ordinance abandoning a utility easement across a tract of land known as Millennium Phase II.

FINANCIAL IMPACT:
Cost: No cost

BACKGROUND:
The prospective owner of a tract of land known as Millennium Phase II located at the southwest intersection of Dallas Parkway and the Cottonbelt Railway desires to construct a building which will encroach into a twenty-five foot (25') public utility easement. The prospective owner has asked the Town of Addison to abandon the easement to allow the construction of the building. The water line located within the easement was abandoned with the construction of Millennium Phase I. Millennium Phase II was replatted at that time with the intention of abandoning the easement. However, in the Millennium Phase II replat it is not clearly identifiable if the easement was abandoned. This Ordinance would clearly denote that the easement is abandoned.

Attached is a proposed Ordinance which abandons the easement into which the building is being constructed. The Ordinance has attached to it a copy of the Millennium Phase II Plat and an Easement Exhibit depicting and describing the utility easement that is to be abandoned.

RECOMMENDATION:
Staff recommends the council adopt the Ordinance abandoning the utility easement.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS PROVIDING FOR THE ABANDONMENT OF A PORTION OF A PUBLIC UTILITY EASEMENT ON PROPERTY REFERRED TO AS THE MILENNIUM PHASE II SUBDIVISION, A TRACT OF 3.5343 ACRES LOCATED AT THE NORTHWEST CORNER OF ARAPAHO ROAD AND DALLAS PARKWAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, a tract of land known as the Millennium Phase II Subdivision was the subject of a plat filed of record in Volume 98221, Page 00022, Real Property Records, Dallas County, Texas (copy attached as Exhibit 1 and incorporated herein); and

WHEREAS, the plat of the Millennium Phase II Subdivision reflected an approximately 25 foot utility easement, recorded by separate instrument, Volume 81075, Page 1696, Real Property Records, Dallas County, Texas, dedicated to public utility use which runs the length of the property and parallel to the south property line; and

WHEREAS, the current owner of the property desires to construct a building which will slightly encroach into the public utility easement (copy of attached as Exhibit 2); and

WHEREAS, there presently exist no water, sanitary sewer, or storm water lines within the public utility easement; and

WHEREAS, Section 272.001, Tex. Loc. Gov. Code, authorizes the release and abandonment of the Easement Portion to the adjacent owner; and

WHEREAS, the City Council of the Town of Addison, Texas, acting pursuant to law, deems it advisable to abandon the Easement Portion which is no longer needed for public use, and said property should be abandoned, relinquished and vacated to the adjacent landowner.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein for all purposes.

Section 2. Abandonment. The Town of Addison does hereby abandon, relinquish and vacate the Easement Portion described and depicted in Exhibit 2 to the adjacent landowner. The Town reserves all authority and rights it has in the public utility easement not abandoned by this Ordinance.

Section 3. Extent of Abandonment. The abandonment provided herein shall apply to the public right, title, easement and interest that the Town of Addison may lawfully abandon, vacate and relinquish. The Town of Addison makes no warranty as to title to the land abandoned.

Section 4. Recording. The City Secretary is hereby directed to certify a copy of this Ordinance and cause it to be recorded in the Deed Records of Dallas County, Texas.

Section 5. Effective Date. This Ordinance shall take effect immediately upon passage and it is so ordained.

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

Mayor
Town of Addison, Texas

ATTEST:

City Secretary
Town of Addison, Texas

APPROVED AS TO FORM:

City Attorney
Town of Addison, Texas

Council Agenda Item: #R8

SUMMARY:

This item is to consider an award of a bid to StageLight, Inc. in the amount of \$28,892.00 for the purchase of a theatrical lighting console for the Addison Theatre Centre.

FINANCIAL IMPACT:

Budgeted Amount: \$30,000.00

Cost: \$28,892.00

BACKGROUND:

This current theatrical lighting controller, at the Addison Theatre Centre, an ETC Obsession 2, was purchased in 1999. During the Fall of 2006, this lighting controller suffered major mechanical issues requiring approximately six months to repair the lighting controller. During these six months, staff was forced to rent a lighting console to allow scheduled performances at the Addison Theatre Centre to continue. The manufacturer of the current lighting controller discontinued the ETC Obsession2 in 2005 because many of the original parts were no longer being manufactured and the manufacturer is no longer supporting this lighting controller.

Staff submitted a budget adjustment request for the FY08 budget to fund the purchase of a new theatrical lighting controller since future failures are likely and renting a lighting console when these failures occur is very costly. Acquisition of the new lighting console has tentatively been scheduled for mid-late November to not interfere with any scheduled performances.

98 vendors were notified of this bid and 10 vendors received plans. Three bids were received, which are listed on the attached bid tabulation form. Due to the specialized nature of this work, there are only a few companies in the Metroplex that are able to bid on this type of project.

Staff has worked with StageLight, Inc. on other theatre-related projects and has performed well. In addition, StageLight, Inc. has performed similar projects for Alley Theatre, Casa Manana Theatre, Tulsa Performing Arts Center and the University of Texas-Austin Bass Hall. References for StageLight, Inc. have been very positive about the quality of their work.

RECOMMENDATION:

Staff recommends approval of this bid.

**Lighting Console
Bid No. 08-01**

#R8

DUE: October 12, 2007

4:00 PM

BIDDER	Signed	Total Bid
Stagelight, Inc.	y	\$28,892.00
Norcostco Texas Costume	y	\$30,200.00
Barbizon Lighting Company	y	\$31,647.00

Shanna N. Sims

Shanna N. Sims, Strategic Services Manager

Katie Roller

Witness

Council Agenda Item: #R9

SUMMARY:

Staff requests approval of a Resolution approving an Interlocal Agreement with The Cooperative Purchasing Network (TCPN) for the purpose of cooperative purchasing.

FINANCIAL IMPACT:

There is no cost to participate in a cooperative purchasing agreement with The Cooperative Purchasing Network. By aggregating purchasing needs with other entities, the Town should receive better per unit pricing on future purchases through this cooperative agreement.

BACKGROUND:

The primary benefit of joining a purchasing cooperative is the ability to utilize the bids of other entities. Specifically, this interlocal agreement will allow the Town of Addison to purchase goods and services at the prices obtained in the bids of entities participating in the cooperative. In doing so, the Town will be able to obtain goods and services in a more efficient and cost effective manner. Staff anticipates using this cooperative for purchases of item such as building maintenance equipment, public safety supplies and equipment, custodial supplies, furniture and public works supplies and equipment.

The Town of Addison is able to be a member of the cooperative purchasing group, such as The Cooperative Purchasing Network, pursuant to Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.102. The Cooperative Purchasing Network is sponsored by the Region 4 Education Service Center.

Cities in the north Texas area that belong to The Cooperative Purchasing Network include Allen, Arlington, Carrollton, Coppell, Frisco, Garland, Grand Prairie, Grapevine, Irving, Lewisville, Mesquite, McKinney, Plano, Richardson, and University Park.

RECOMMENDATION:

Staff recommends approval of the attached resolution and interlocal agreement.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R_____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE REGION FOUR EDUCATION SERVICE CENTER, WHICH SPONSORS THE COOPERATIVE PURCHASING NETWORK (TCPN), PROVIDING FOR A COOPERATIVE PURCHASING PROGRAM FOR GOODS AND SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the “Texas Interlocal Cooperation Act”, Chapter 791 Texas Government Code provides for the cooperation between local governmental bodies in the performance of governmental functions and services; and

WHEREAS, the Texas Interlocal Cooperation Act provides in part that each party to an interlocal agreement, paying for the performance of governmental functions shall make those payments from current revenues legally available to that party; and

WHEREAS, the Town of Addison is authorized by Section 271.02 of the Texas Local Government Code to participate in a cooperative purchasing program with another local government or local cooperative organization; and

WHEREAS, The Cooperative Purchasing Network (“TCPN”) is a department of the Region 4 Education Service Center of Texas, a regional education service center established pursuant to Chapter 8 of the Texas Education Code, which, among other things, enables school districts to operate more efficiently and economically; and

WHEREAS, TCPN is a local cooperative organization established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment, such that the purchases of goods or services through The Cooperative Purchasing Network will satisfy any state law requiring the Town government to seek competitive bids for the purchase of goods or services; and.

WHEREAS, the Town of Addison desires to enter into an Interlocal Agreement (copy attached to this Resolution) with Region 4 Education Service Center of Texas and participate in The Cooperative Purchasing Network.

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

Section 1. The above and foregoing premises are true and are incorporated herein and made a part hereof.

Section 2. The Interlocal Agreement between Region 4 Education Service Center and the Town of Addison, Texas, a true and correct copy of which is attached to this Resolution and which provides providing for cooperative purchasing is hereby approved. The City Manager is authorized to execute the same on behalf of the Town of Addison.

Section 3. Shanna N. Sims, Strategic Services Manager of the Town of Addison, under the direction of the City Council of Town of Addison, is hereby designated to act for the Town of Addison in all matters relating to The Cooperative Purchasing Network including the designation of specific contracts in which the Town of Addison desires to participate.

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

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 23rd day of October, 2007.

Joe Chow, Mayor

ATTEST:

Mario Canizares, City Secretary

APPROVED AS TO FORM:

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John Hill, City Attorney

INTERLOCAL AGREEMENT

Region 4 Education Service Center

Contracting Parties

Town of Addison

and

Region 4 Education Service Center

101 - 950
County-District Number

This agreement is effective October 24, 2007 and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This agreement may be terminated with or without cause by either party upon (60) days prior written notice, or may also be terminated for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

Statement of Services to be Performed:

Authority for such services is granted under Government Code, Title 7, Chapter 791 Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102. The purpose of this cooperative is to obtain substantial savings for member school districts and public entities through volume purchasing.

Role of the Purchasing Cooperative

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. Receive quantity requests from entities and prepare appropriate tally of quantities.
4. Initiate and implement activities related to the bidding and vendors selection process.
5. Provide members with procedures for ordering, delivery, and billing.

Role of the Member School District or Public Entity:

1. Commitment to participate in the program as indicated by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.
3. Commit to purchase products and services that become part of the official products and services list when it is in the best interest of the member entity.
4. Prepare purchase orders issued to the appropriate vendor from the official award list provided by the Purchasing Cooperative.

5. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
6. Pay vendors in a timely manner for all goods and services received.

Authorization:

Region 4 Education Service Center and The Cooperative Purchasing Network (TCPN) executed a contract to provide cooperative purchasing opportunities to school districts and public entities.

Please send a signed Interlocal Agreement to Region 4 ESC, Attn: TCPN, 7145 W. Tidwell, Houston, TX 77092-2096.

School District or Public Entity

By _____
Authorized Signature

Title

Date

Shanna N. Sims
Contact Person

Strategic Services Manager
Title of Contact

P.O. Box 9010
Mailing Address

Addison, TX 75001
City, State, Zip

972-450-7089
Contact's Telephone Number

ssims@addisontx.gov
E-mail Address

Region 4 Education Service Center

By _____
Authorized Signature

Deputy Director, Financial Services/CFO
Title

Date

Stuart Verdon-Director-TCPN
Contact Person

(713)-744-8115
Telephone Number

sverdon@esc4.net
E-mail Address

Council Agenda Item: #R10

SUMMARY:

Council approval is requested of a resolution suspending the system-wide rate increase request filed by Atmos Energy Corporation, Mid-Tex Division (the Company) on September 20, 2007.

FINANCIAL IMPACT:

In their filing, the Company asks the Town to approve rate increases that would result in an 8.27% increase in the average residential bill, a 22.72% increase in the average commercial bill, and a 38.95% increase in the average industrial bill. The Town receives revenue from the company in the form of a franchise fee that is a percentage of gross receipts. If the rates were approved, the Town's revenue would increase (assuming constant consumption that is dependent on weather) \$5,850 annually. The Town is also a consumer of natural gas, and if the rates are approved as submitted would pay an additional \$10,810 annually, for a net loss of \$4,960. The Gas Utility Regulatory Act (GURA) requires the utility to reimburse the Town for its reasonable costs associated with the activities related to contesting any gas rate action.

BACKGROUND:

The Railroad Commission issued a Final Order approving new system-wide rates for customers of Atmos Energy's Mid-Tex Division in May 2007. The ruling was a result of a system-wide rate increase filed by the company in 2006. Residential rates were increased by \$10 million annually. Also in May, the company filed its application for its fourth GRIP surcharge in four years, seeking to increase the rates of all customers by \$12 million annually. Despite both of these recent actions to increase customers' rates, the company has filed an application with cities retaining original jurisdiction over rates and services to increase system-wide rates by another \$52 million, of which \$20 million would be from residential customers.

The resolution suspends the effective date of the Company's rate increase for the maximum period permitted by law to allow the Town time to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue. The law provides that a rate request made by a natural gas utility cannot become effective until 35 days following the filing of the application to change rates. The law permits the City to suspend the effective date for 90 days.

The City has participated in prior company rate matters with a coalition of cities now known as Atmos Cities Steering Committee (ACSC). ACSC is a permanent standing committee with over 100 members who have passed resolutions authorizing ACSC to intervene on behalf of the city in natural gas matters pending before the Railroad Commission, the Courts or the Legislature. Negotiating clout and efficiency are enhanced by the Town cooperating with other ACSC cities in a common review and common purpose. Additionally, rate case expenses are minimized when ACSC hires one set of attorneys and experts who work under the guidance and control of the ACSC Executive Committee. Any settlement negotiated by ACSC must be approved by all ACSC member city councils through new rate ordinances.

RECOMMENDATION:

It is recommended Council approve the attached resolution suspending the Company's imposing of new higher gas rates to customers served within the Town of Addison.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON SUSPENDING THE OCTOBER 25, 2007, EFFECTIVE DATE OF ATMOS ENERGY CORP., MID-TEX DIVISION REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH ATMOS CITIES STEERING COMMITTEE AND OTHER CITIES IN THE ATMOS ENERGY CORP., MID-TEX DIVISION SERVICE AREA TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about September 20, 2007, Atmos Energy Corp., Mid-Tex Division (Atmos), pursuant to Gas Utility Regulatory Act § 104.102 filed with the Town of Addison, Texas a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area effective October 25, 2007; and

WHEREAS, it is reasonable for the Town of Addison to maintain its involvement in the Atmos Cities Steering Committee (ACSC) and to cooperate with the 141 similarly situated city members and other city participants of ACSC in conducting a review of Atmos' application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with Atmos and direct any necessary litigation; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

Section 1. That the October 25, 2007, effective date of the rate request submitted by Atmos on or about September 20, 2007, be and is hereby suspended for the maximum period

allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

Section 2. That the Town is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area to hire and direct legal counsel and consultants, negotiate with Atmos, make recommendations to the Town regarding reasonable rates and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the Town or Railroad Commission.

Section 3. That the Town's reasonable rate case expenses shall be reimbursed by Atmos.

Section 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 5. A copy of this Resolution shall be sent to Atmos, care of Joe T. Christian, Director of Rates, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Blevins Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

Section 6. This Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2007.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

Council Agenda Item: #R11

SUMMARY:

Staff would like to provide an overview of the proposed changes to the 2007 Purchasing Manual at the October 23rd City Council meeting. The proposed changes are:

- Updating the amount in which a formal bid process is required from \$25,000 to \$50,000 to concur with the recent change in state law.
- Adopting policies and procedures for receiving electronic bids and proposals.
- Adding provisions for emergency change orders and the establishment of a threshold per project to allow for the approval of change orders by the City Manager without specific authorization from the City Council.

Staff is not requesting any action by the City Council at the October 23rd City Council meeting. Staff will schedule formal action by placing an agenda item on the November 13th City Council meeting for the City Council to consider approving a resolution authorizing these changes.

FINANCIAL IMPACT:

None.

BACKGROUND:

The Mayor and City Council adopted the Purchasing Manual in August 2005. This manual is a comprehensive resource for all procurement issues and is utilized by Town employees.

Since the adoption of the Purchasing Manual in August 2005, staff has identified additional changes that are recommended to the City Council for approval. In addition, the Texas Legislature has recently passed legislation that modifies purchasing procedures.

A Council subcommittee comprised of Tom Braun, Dennis Kraft and Roger Mellow met with staff from the City Manager's Office, Public Works Department and Finance Department in July and September to discuss these proposed changes, as well as other enhancements regarding contract management and administration. This subcommittee is recommending adoption of the proposed changes.

Staff would like to take the opportunity at the October 23rd City Council meeting to provide an overview of these changes and to seek Council's feedback regarding these proposed changes before scheduling formal action authorizing these changes to the Town's purchasing manual. The draft resolution is provided so that the City Council can see the exact changes being proposed by staff.

Below are brief summaries regarding the changes being recommended:

Formal Bidding Process for Purchases of \$50,000 or Greater

In the 2007 Legislative Session a bill was passed (SB1765) that would raise the purchase limit before a formal bidding process is required. Prior to the passage of this bill any purchase of \$25,000 or more required the Town to go through a formal bidding process. SB1765 increased this financial threshold to now require any purchases more than \$50,000 to go through a formal bidding process. This legislation became effective September 1, 2007.

Staff is recommending that the Purchasing Manual be updated to reflect the \$50,000 amount. The City Council will continue to approve all purchases and contracts that are \$25,000 or greater – but staff will only be required to get written or verbal quotations for purchases that are \$50,000 or less.

Receiving Electronic Bids and Proposals

In 2001, the Texas Legislature passed a bill allowing municipalities to accept bids and proposals electronically. Electronic bidding can provide many benefits including:

- Elimination of arithmetic errors and reduction of errors resulting from illegible handwritten responses.
- Standardized bid sheets which allow all bids and proposals to be submitted in a consistent fashion.
- Increased ease and convenience in submitting bids and proposals.

Section 252.0415 of the Texas Local Government Code requires municipalities to adopt rules to ensure the identification, security, and confidentiality of electronic bids or proposals and that electronic bids or proposals will remain effectively unopened until the proper time. The attached resolution will establish these rules by adopting policies and procedures for receiving electronic bids and proposals.

Staff is currently utilizing a bid distribution service called RFP Depot and staff plans to test the electronic bidding process on a pilot bid or proposal during the next few months. Upon successful completion of the pilot test, electronic bidding will be fully implemented by staff for future bids and proposals.

Vendors will not be required to submit bids or proposals electronically but will have the option to do so once e-bidding is fully implemented.

Threshold and Emergency Change Orders

In response to City Council inquiries at the April 24th meeting regarding change orders and contingency budgets, staff has done additional research as well as received input from a Council subcommittee (Council members Tom Braun, Dennis Kraft and Roger Mellow) regarding contract management and change orders. As a result of this input and information, staff has revised the proposed policy regarding change orders to include a specified “threshold” amount for change orders as determined by the City Council. The threshold meets two important needs:

- Allows the City Council to set financial parameters for capital projects, specifically the dollar amount or percentage of change orders allowed for a capital project.
- Allows work on a capital project to continue in a timely manner by allowing the City Manager to approve change orders that are \$25,000 or less and within the threshold established by the City Council for the project.

During the development of a Change Orders procedures manual, staff also identified the need to have procedures in place for emergency change orders. These are change orders that qualify as an emergency under purchasing guidelines and are authorized by the City Manager prior to Council approval. Staff will be required to bring any emergency change orders to the Council for approval as soon as possible after the change order is implemented. Staff recommends adding this provision to the Purchasing Manual.

RECOMMENDATION:

No formal action is being requested at tonight's Council meeting.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS AMENDING THE TOWN OF ADDISON'S PURCHASING MANUAL BY ADDING PROVISIONS REGARDING ELECTRONICALLY SUBMITTED BIDS AND PROPOSALS, ADDING PROVISIONS REGARDING CHANGE ORDERS AND NOTIFICATION THRESHOLDS, AND REFERENCING THE CHANGE ORDERS PROCEDURES MANUAL WITH RESPECT TO CHANGE ORDERS, AND AMENDING PROVISIONS REGARDING COMPETITIVE SEALED BIDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the goals of public purchasing are to ensure that public funds are safe-guarded and that the best value is received for these dollars and to ensure that all responsible bidders are given a fair opportunity to compete for the Town's business; and

WHEREAS, in determining purchasing practices, the Town of Addison is guided by the City Charter, State law and City ordinances, supplemented from time to time by City Council resolutions and City administrative policies and procedures; and

WHEREAS, the Town is authorized by Section 252.0415 of the Tex. Loc. Gov. Code to receive bids or proposals through electronic transmission if the City Council adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

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

Section 1. Amendment. Chapter 1 (Laws & Statutes Governing Purchasing), Section 1 (Bidding Requirements); Chapter 3 (Informal Quotes), Section 2 (Purchase of \$3,000 to \$25,000); Chapter 4 (Formal Bids), Section 1 (Purchases in Excess of \$25,000) and Section 4 (Procedures for Accepting Electronically Submitted Bids and Proposals); Chapter 6 (Procurement of Professional Services), Sections 5 and 6 (Procurement of Architectural, Engineering or Land Surveying Services); Chapter 7 (Purchase Orders, Change Orders and Receiving), Section 6 (Notification Threshold for Change Orders), Section 7 (Approval for Change Orders), Section 8 (Change Order Procedures) of the Town of Addison's Purchasing Manual, are hereby amended in the following particulars, and all other chapters, sections, subsections, paragraphs and words are not amended but are ratified and confirmed.

- A. Chapter 1, Section 1 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 1. Bidding Requirements

A. As a general rule, before a municipality may enter into a contract that requires an expenditure of more than ~~\$25,000~~ \$50,000 from one or more municipal funds, the municipality must (i) comply with the procedures 252 for competitive sealed bidding or competitive sealed proposals, (ii) use the reverse auction procedure as defined by Section 2155.062, Texas Government Code, or (iii) comply with a method prescribed by Chapter 271, Subchapter H of the Local Government Code (alternate project delivery methods for certain projects). Electronically submitted bids or proposals shall be in accordance with Section 252.0415(a) of the Texas Local Government Code requiring the identification, security, and confidentiality of electronic bids or proposals and that electronic bids or proposals shall remain effectively unopened until the proper time. All electronically submitted bids will remain secure and confidential and remain effectively unopened until the proper time.

- B. Chapter 3, Section 2 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 2. Purchases of \$3,000 - ~~\$25,000~~ \$50,000

For purchases between \$3,000.00 and up to ~~\$25,000.00~~ \$50,000.00 the following apply:

- A. The using department will create a Purchase Order in the system (see Chapter 7 on Purchase Orders) and complete the routing for approval before a purchase is made.
1. All departments should endeavor to promote fair and open competition for every purchase and to secure the best value, and the highest quality merchandise at the lowest possible cost.
- B. The Department Head, or the Department's Head's designee, is responsible for soliciting quotations.
1. The Department shall obtain written quotations from at least three vendors, whenever possible.
 2. At least two Historically Underutilized Business (HUBs) if available, (based upon information provided by the Texas Comptroller Building and Procurement Commission), shall be contacted, on a rotating basis, for quotations for any purchase more than \$3,000 but

less than ~~\$25,000~~ \$50,000. (Local Government Code Section 252.0215). If the Texas Comptroller's ~~Building and Procurement Commission~~ list (<http://www.window.state.tx.us/procurement/prog/hub>) fails to identify a HUB in the North Texas region (including Dallas County), the Town is exempt from this requirement.

- C. Chapter 4, Section 1 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 1. Purchases in Excess of \$25,000

For purchases in excess of \$25,000 the following apply:

A. Purchases in excess of \$25,000 ~~shall be on a competitive sealed bid basis and~~ will be referred to the City Council for approval. Purchases in excess of \$50,000 shall be on a competitive sealed bid basis or by other authorized methods.

- D. Chapter 4, Section 4 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 4. Procedures for Accepting Electronically Submitted Bids and Proposals.

A. Bids and proposals will be advertised and released in the current manner. A notice will be added to the bid terms and conditions stating vendors may submit responses electronically through the Town's Internet bid service provider at the web address provided. Upon receipt of the vendor's bid or proposal by the Town, an automatic return notification will be sent to the vendor via e-mail. Electronic bid and proposal responses will be time and date stamped by the Internet bid service provider.

B. At the specific bid closing time, Financial and Strategic Services will access the Town's Internet bid service provider with a password and will open, download, and print all bids and proposals and any associated bid tabulation summaries provided by the Town's Internet bid service provider.

C. Financial and Strategic Services staff will then read aloud all bid responses received by the closing date and time to any parties present at the bid opening. All bids shall be tabulated in the current manner and copies shall be made available to the interested parties.

- E. Chapter 6, Section 5 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 5. Procurement of Architectural, Engineering, or Land Surveying Services – Fees Estimated to be Under ~~\$25,000~~ \$50,000 or Less Per Year

F. Chapter 6, Section 6 of the Purchasing Manual is amended to that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 6. Procurement of Architectural, Engineering, or Land Surveying Services – Fees Estimated to be Over ~~\$25,000~~ \$50,000 Per Year.

G. Chapter 7, Section 6 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 6. Threshold for Change Orders.

- A. A “threshold” is defined as a financial limit on the amount of financial changes executed through change orders (whether an increase or decrease), which can be authorized by the City Manager (or the City Manager’s designee) on a capital project before requiring City Council approval.
- B. The City Council may establish a threshold for a capital project at the time of award of a bid or during the course of a project. A threshold can be established at any dollar amount or percentage of bid award provided that the threshold does not exceed 25% of the total bid award.
- C. If a threshold has been established by the City Council for the project, a change order can be approved solely by the City Manager (or the City Manager’s designee), if the amount of the change order is \$25,000 or less and within the threshold amount.
- D. Once the threshold has been met or exceeded, any subsequent change orders will be required to be approved by the City Council before proceeding with the change order.
- E. A summary of all change orders authorized on a specific capital project will be listed on the Final Payment agenda item.

H. Chapter 7, Section 7 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section 67. Approval for Change Orders.

- A. In the event it becomes necessary to make changes in the plans or specifications after performance of a contract is begun, or if it is

necessary to decrease or increase the quantity of work to be performed, or of the materials, equipment, or supplies to be furnished, the change orders ~~the City Council~~ may be approved ~~change orders~~ making these changes. If the change order involves a decrease or an increase of more than \$25,000, the City Council needs to approve the change order. If the change order involves a decrease or an increase of \$25,000 or less, the City Manager or the City Manager's designee may approve a change order (subject to the threshold provisions set forth in Section 6 above).

~~B. Once change orders total \$25,000 on a specific contract, any subsequent change order needs to be approved by the City Council.~~

B. If a change order is greater than \$25,000 and is extremely time sensitive and qualifies as an emergency, the City Manager (or the City Manager's designee) may approve such a change order prior to Council approval. However, the change order must still be brought to the Council as soon as possible. Likewise, if a threshold has been established in accordance with Section 6, above, and a change order in the amount of \$25,000 or less exceeds the threshold or would cause the threshold to be exceeded, and if such change order is extremely sensitive and qualifies as an emergency, the City Manager (or the City Manager's designee) may approve such a change order prior to Council approval. Emergency conditions are defined in the Town of Addison Purchasing Manual

C. The original contract price may not be increased by more than twenty-five percent (25%). (Local Government Code Sec. 252.048(d))

D. The original contract price may not be decreased by more than twenty-five percent (25%) without the consent of the contractor. (Local Government Code Sec. 252.048(d))

E. All approved change orders must be summarized and listed on the "Final Payment" agenda item. The City Council needs to approve the final payment of vendors for any contract over \$25,000 that involves construction or installation of equipment.

I. Chapter 7, Section 8 of the Purchasing Manual is amended so that it shall hereafter read as follows (additions are underlined, deletions are ~~struck through~~):

Section ~~7~~8. Change Order Procedures.

A. Please see the Change Orders Procedures Manual (APPENDIX J) for specific procedures and forms related to Change Orders.

~~B. All change orders shall be submitted to the City Manager for approval prior to implementation.~~

~~1. The City Manager, Deputy City Manager or Assistant City Manager may approve change orders equal to or less than \$25,000.00.~~

~~2. Change orders greater than \$25,000.00 or greater shall be referred to the City Council for approval prior to implementation.~~

~~3. Copies of all change orders shall be sent to the Strategic Services Manager and will become part of the permanent file of the project.~~

~~B. Change Orders that are for Non-Capital projects equal to or less than \$25,000 can be completed within the system once they are approved by the City Manager.~~

~~1. Change orders can be completed on the Purchase Order within the system based on limits established for users by the Strategic Services Division.~~

~~a. Department users can only change P.O.'s by +/- 25% not to exceed \$1,500, any changes required beyond that would have to be communicated to the Financial and Strategic Services Department. (See *APPENDIX D - Change Orders*).~~

~~b. The Strategic Services Manager, Management Analyst and Assistant Director of Financial and Strategic Services have unlimited change authority. Change orders that are in excess of \$10,000 and change orders requested by the Financial and Strategic Services Department will require City Manager or his designee's approval before it is entered into the computer system.~~

Section 2. This Resolution shall become effective from and after its date of passage.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas
this ___ day of _____, 2007.

Joe Chow, Mayor

ATTEST:

By: _____
Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R12

There are no attachments for this Item.

Council Agenda Item: #R13

SUMMARY:

For the City Council to consider re-assigning the existing lease from Clay Pit Grill & Curry House to Twin City Hotels, LLC

FINANCIAL IMPACT:

Revenue Budget Amount: \$76,500

Cost: \$0

BACKGROUND:

In January 2005, Clay Pit made a request to the Town, which has a ground lease, for rent relief in the amount of 50% of their lease for a 12-month period (a total of \$32,496). The also made a similar request of CNL APR Partners, LP, (now GE Capital) which is the owner of the building.

In February 2005, the City Council approved Clay Pit's request with the following conditions:

- Required that Clay Pit repay \$32,496 over a 60-month period in addition to their normal monthly rent, beginning with the October 2006 payment.
- Extended the lease for 10 additional months through December 31, 2012, at which time the building becomes the property of the Town.
- Provided an option for Clay Pit to execute a new lease directly with the Town

In August 2007, Clay Pit made another assistance request to the Town. Clay Pit's request consists of additional rent relief (amount unknown), the construction of a fence or other barrier between Clay Pit and Black Finn at the rear parking lot (\$3,500), and full enclosure of the patio (\$100,000). None of this work was ever completed.

In October, Clay Pit notified the Town that they would like to re-assign their lease to a group of investors that were interested in their restaurant. Recently, the owners of Clay Pit have undergone some family and financial challenges and would like to take the opportunity to re-assign the lease to a willing party and take on the terms presently in effect. The potential tenants are Twin City Hotels, LLC a group of investors that are looking to maintain the quality of the Clay Pit menu and consider expanding the offerings through a more extensive menu and catering.

The Finance Department is in the process of reviewing the financials, background/credit checks, and the necessary due diligence. We are trying to accommodate Clay Pit's request because the new owners would like to market the restaurant at an Indian festival at Texas Stadium on November 10th. The festival draws over 40,000 people and they would like to be in a position to promote the restaurant and announce themselves to the community.

RECOMMENDATION:

Provided that a favorable review by the Finance Department is completed, the recommendation is to approve the agreement.



Business Plan

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Executive Summary

CONFIDENTIALITY STATEMENT: Information contained in this business plan is strictly confidential and is being presented to specific persons with the understanding that those persons will maintain confidentiality and not disclose or distribute any part of this plan to third parties without the prior written permission of the author(s). Information includes any data, reports, schedules, or attachments that may be contained in or referred to in this document.

Introduction/Statement of Purpose:

Clay pit is a medium-sized restaurant serving contemporary and creative ethnic Indian food which would be very apt and unique for the climactic conditions here in Texas. The creators/managing partners of the concept, Rao Rajakumari, Devanand Addagatla and Prasad Atmakur are seeking to lease the current location of the restaurant.

Clay Pit will be owned and operated by Twin City Hotels LLC. The legal structure of the Limited Liability Partnership provides for the inclusion of three Investment Partnership shares of \$150,000 each for Rajakumari, Devanand and Prasad respectively, totaling \$450,000 in contributions. Financial projections for the concept suggest that a 100% ROI (return on investment) may be realistically achieved in 5 years.

The General Manager for Clay Pit will be Navin Reddy and the Executive Chef will be Nirmal Singh. The collective years of experience between Navin, Nirmal and Rajakumari exceeds 50 years in the restaurant industry. Their combined efforts to continue the success of Clay Pit have served to yield a detailed plan that encompasses the necessary elements required to succeed in today's competitive restaurant environment.

Years of operational and marketing experience have been organized and documented to create a comprehensive blueprint for success. Proven marketing techniques and operational systems will allow management to be proactive rather than reactive to the conditions and obstacles associated with assuming ownership of an existing restaurant concept. Making significant addition to Clay Pit's current success, aggressive marketing efforts will be undertaken to offer Catering service to the surrounding businesses and hospitals. Lunch buffet menu will also be enhanced to generate increased sales.

Having a sound operational plan allows management to focus on building sales rather than profit. The managing partners have an extremely high degree of confidence that the systems and controls incorporated in the business plan will yield a calculated return for a given sales volume.

The successful acquisition of the first Clay Pit will hopefully lead to an aggressive growth plan wherein contributing investment members will have the first right of refusal to participate in the expansion.

In closing, we feel the business plan for Clay Pit represents a realistic expectation of success for all parties involved.

Company Description

Clay Pit will be owned and operated by Twin City Hotels LLC, a Nevada limited Liability partnership consisting of Managing Partners, Rajakumari, Devanand and Prasad. They will own three equal shares of Twin City Hotels LLC.

Location

Clay Pit will be located at 4460 Belt Line Rd. Addison, TX 75001. Twin City Hotels LLC will maintain a corporate office at 15891 Christopher Lane, Frisco, TX 75035.

The facility for the restaurant will be a leased space in a pre-existing free-standing building of approximately 5000 square feet.

Capitalization

The proposed restaurant will cost an estimated \$400,000 to open along with a reserve of \$50,000. Funding for the venture will be entirely provided by contributions from the partners. The proposed sources of funds are as follows:

Source of Funds	Investment Type	Amount
Managing Partner – Devanand Addagatla	Capital contribution	\$150,000
Managing Partner – Rajakumari Rao	Capital contribution	\$150,000
Managing Partner – Prasad Atmakur	Capital contribution	\$150,000
Total		\$450,000

Business Concept

Concept Description and Statement

Clay Pit will be a medium to expensive, fine dining style restaurant serving authentic Indian/fusion cuisine. The service style of the restaurant will be a table service featuring a professional wait staff.

The décor for Clay Pit can be described as contemporary. The furnishings will reflect the projected image of the décor and restaurant concept. Customers will be greeted with the aromatic scent emitted from the juices dripping onto the burning charcoal in the Tandoor. They will choose from a menu that will be extremely unique and contemporary relative to a traditional Indian restaurant. The menu will be featuring daily chef specials and a separate lunch, dinner menu complimented by a fine wine list created by a wine connoisseur. Our chef will have great latitude in designing and producing menu offerings from different parts of India. We will endeavor to procure all the traditional, authentic ingredients necessary to hold true to these varied and interesting recipes.

The Bar will offer fine drinks from a comprehensive list of wines, famous fine scotch, single malt's and other liquor. The cocktails will be crafted by our seasoned bartender who will be trained with cocktail recipes from exotic places of India.

The organic food ingredients will allow us to price appropriately to the health conscious guests. Meal prices are expected to range from \$15.00 to \$30.00. The dining experience will be approximately 90 minutes.

The restaurant will have approximately 200 seats in the dining room and another 50 seats in the bar. Other services will include catering and delivery as well as a take out service.

Clay Pit will be open 7 days a week. The restaurant anticipates serving during lunch and dinner meal periods. The expected hours of operation are as follows:

	Lunch	Dinner
Monday	11:00am-2:30pm	5:00pm-10:00pm
Tuesday	11:00am-2:30pm	5:00pm-10:00pm
Wednesday	11:00am-2:30pm	5:00pm-10:00pm
Thursday	11:00am-2:30pm	5:00pm-10:00pm
Friday	11:00am-2:30pm	5:00pm-11:00pm
Saturday	12:00am-3:00pm	5:00pm-11:00pm
Sunday	12:00am-3:00pm	5:00pm-10:00pm

Menu

Please see Appendix A for a detailed menu.

Management Team

Managing Partners – Rajakumari, Devanand & Prasad

Rajakumari graduated with a MS and a MBA from California State University while she was a Managing Partner at Sarovar Inc – Indian Restaurant for more than 8 years. She will have the oversight and hands on responsibility for operational and personnel tasks. She is expected join the management team upon assumption of the lease.

Devanand Addagatla graduated with A MS Computer Science from UT El Paso and has successfully managed several businesses and will be responsible for Marketing, Business strategy and growth.

Prasad graduated with an MBA from Wagner College in New York City. He had a lengthy stint in the Marketing & IT sectors with fortune 500 companies before embarking on his successful foray into entrepreneurship.

General Manager - Navin Reddy

Navin Reddy has enjoyed a successful career for over 20 years in the restaurant industry. Mr. Reddy began his career at Subway Sandwiches and to be the General Manager at Sarorvar Restaurant for 10 years (See Appendix A for resume). Since then he has excelled in the industry, having opened three other successful restaurants to sell them for a healthy profit.

As the General Manager Mr. Reddy will oversee and coordinate the planning, organizing, training and leadership necessary to achieve stated objectives in sales, costs, employee retention, guest service and satisfaction, food quality, cleanliness and sanitation.

Kitchen Manager/Executive Chef – Nirmal Singh

The Kitchen Manager and Executive Chef for Clay Pit will be Nirmal Singh. He has an extensive background in the restaurant industry spanning over 25 years. His current position is the Executive Chef for one of the leading restaurants in the Sanfrancisco Bay area. Other experience includes more than 8 years as the Executive Chef at Sarovar Inc. where he worked successfully with Rajakumari and Damidi.

As Kitchen Manager, Nirmal will be directly responsible for all kitchen functions including food purchasing, preparation and maintenance of quality standards; sanitation and cleanliness; training of employees in methods of cooking, preparation, plate presentation, portion and cost control.

Industry Assessment

Stronger Sales

According to the National Restaurant Association, industry sales for 2007 are expected to reach a record \$537 billion dollars in the U.S. That figure is a whopping 5% increase over 2006 sales and represents the sixteenth consecutive year of real sales growth for the industry. Restaurant industry sales account for 4% of the GNP for the United States.

Positive economic indicators and increases in consumer's disposable income give rise to expectations that 2007 will be another record year for the industry. The total number of locations is expected to top 935,000 in this year and reach 1 million locations by the year 2010.

Eating places, defined as full-service, limited service, cafeterias, social caterers and snack bars by the NRA, contribute the bulk of industry food and drink sales. Of that segment, full-service restaurant sales for 2007 are projected to reach \$182 billion, a growth rate of 5.1% over 2006. Quick-service sales are also set to increase by 5% and topping \$150 billion in 2007

Ethnic Diversity

Restaurants have long been considered among the most diverse workplaces with foreign-born employees making up roughly 25% of the workforce. This diversity ratio spills over into restaurant ownership as well, with one in four eating and drinking establishments being owned by African- Americans, Hispanic-Americans or Asian-Americans — a ratio that is higher than the national average. Furthermore, the number of minority-owned restaurants is growing faster than the industry as a whole.

Leading Employer

The restaurant industry is the nation's largest private-sector employer with approximately 12.8 million workers in 2007 representing almost 9% of the total U.S. workforce. According to the National Restaurant Association, the industry has created, on average, approximately 250,000 jobs per year for the last ten years and is slated to add 2 million new jobs during the next ten years.

Nevertheless, the industry remains far behind other retail segments, posting \$61,000 in annual sales for every full time equivalent employee. Furthermore, and even though the labor shortage is not as severe as it was in the mid to late 1990s, a sizeable proportion of restaurant operators report that the lack of labor is causing problems.

In a National Restaurant Association Survey, 46% of quick service operators and roughly one-third of full service restaurants reported that they were seeing fewer applicants for hourly positions than they had two years before. Restaurant operators reported an even greater decline in the number of qualified job applicants. Sixty-eight percent of quick service operators and nearly half of full service operators surveyed said

that they were seeing fewer qualified job applicants than two years earlier. Many restaurateurs say it's taking longer to fill job vacancies than it did two years ago.

Operators, in their effort to combat labor shortages, are expected to dedicate more resources to employees training, offer health benefits, and take measures to step up recruiting.

Meeting Challenges

In addition to labor concerns, operators report that rising wholesale costs, energy cost, healthcare insurance and liability insurance costs have negative impacts on their business. As a result, the National Restaurant Association has slated these issues as part of their public policy agenda. They have pledged to take an active role in affecting commodity prices and trade and support current legislation for healthcare reform. They also support an effective energy policy and are in favor of legal reform to reduce frivolous lawsuits against the industry.

Consumer Trends

Approximately 47% of all food dollars spent by consumers is spent in eating and drinking establishments. That figure is up dramatically since 1955 in which only 25% of all consumers spending for food and drink went to restaurants. 43% of adults are of the opinion that eating away is as cost effective as cooking at home and cleaning up.

Expenditures on food away from home rise dramatically for households with income before taxes of \$30,000 or more. Household incomes of greater than \$75,000 have increased to 28%. Higher income households tend to spend more of their food dollar in meals away from home.

According to the National Restaurant Association's *Restaurant Spending* the typical American household spent \$2,634 on food away from home, a per capita expenditure of \$1054. Households in metropolitan areas tend to spend more than households in non-metropolitan areas. Households with income over \$70,000 spent an average of \$4,544, \$1,466 per capita on food away from home. Other trends noted in the report showed that adults between 35 and 54 spend more on food away from home as a result of their higher incomes. Of that group, households headed by 35-44-year-olds spent an average of \$3,234 for food away from home.

Flourishing economic growth, changing lifestyles and a diverse ethnic population have contributed to the variety of cuisine and restaurant concepts, making the U.S. a world leader in restaurant innovation. Ethnic cuisines have mingled with traditional restaurant fare resulting in varied menus at every industry segment.

The baby boomer population, the demographic segment that has the most significant impact in terms of marketing and menu mix, is getting older. By the year 2010, 19% of the population will be between the ages of 50 and 64. The changing dining habits of this group will greatly influence menus and restaurant concepts in the coming years.

Statistics show that the average adult purchased a meal 5.3 times per week in 2004. Public awareness of health issues continues to prompt operators to provide more health conscious menu items. Entrée salads saw the most significant increase across all

industry segments. Low-carb items, healthful options for children, and locally produced foods and produce have become more prevalent.

Operators expect to see continued interest in ethnic foods, high flavor items such as bold and spicy foods, sandwiches and seafood.

Beverage trends were characterized by the continuing popularity of bottled water, specialty coffees and iced tea, and increasing wine sales at full service restaurants. 69% of quick service operators reported that bottled water sales had significant increases.

A federal survey released in September 2004 revealed that Americans spend 73 minutes a day eating and drinking. They spend approximately 5.1 hours per day on other leisure activity such as watching television, exercising or socializing.

Travel and tourism is again on the rise with an expected 2% increase in domestic travel and a 5.6% increase in tourism from abroad. Tourism is expected to increase closer to pre 9/11 levels by the year 2007.

Operation Trends

Greater use of technology and more reliance on staff training will be used to increase productivity and gain higher revenues. More than two-thirds of restaurant operators say they are more productive than they were two years ago. Nearly thirty percent of food-service operators say they are increasing their budget for technology spending.

Nearly two thirds of all restaurants now have websites including 9 out of 10 fine dining restaurants. In addition to posting information such as menu and location, an increasing number are expected to offer other services such as reservations, delivery and takeout ordering.

Menu prices for 2007 are expected to increase at a rate of 2.9%, slightly lower than the 3.1% growth seen in 2005 and 2006. The expected increase is due in part to increased commodity and energy costs, as well as the increase in the minimum wage.

Gift cards and gift certificates in restaurants continue to be the number one preference by consumers as compared to other retail industries. Gift card (and gift certificate) sales account for roughly 5% of annual restaurant sales. Expect a continued increase in the number of restaurants offering gift cards in 2008.

Banquet, catering, delivery and takeout continue to be on the rise in full service restaurants as operators take advantage of assets already in place. Half of family- and casual-dining operators and two thirds of fine-dining operators now offer catering. Nearly 40% of operators surveyed by the NRA say that takeout sales are a larger proportion of revenue than it was two years ago.

Menus will be strongly influenced by the health-conscious diners as well as the adventurous. The growing sophistication of American diner's palates as well as the ethnic diversity in the U.S. will continue to challenge operators to roll out new menu items and ingredients.

Information Sources

For more information about current trends and statistics, visit the National Restaurant Association website at www.restaurant.org.

2007 Restaurant Industry Forecast; National Restaurant Association
National Restaurant Association's *Restaurant Spending*
October 2006 Survey, National Restaurant Association
U.S. Department of Labor
U.S. Census Bureau

Target Market

We anticipate that Clay Pit will appeal to a broad base of consumers especially the 1000 plus high-tech industry employees working in the Dallas, Richardson and Addison areas. A partial list of high tech companies in a one to six mile radius of the proposed location are: Fujitsu, Johnson Controls, Samsung, Cisco Systems, Perot systems, AT&T, Cingular, Comcast, Verizon, MCI, Lucent, Nextel, Nortel, Texas Instruments, I2 Technologies, Tektronix, Blue Cross Blue Shield, Compuware etc.

While we expect to be frequented by all types of diners in both the residential and business community, the concept should be particularly suited to the increasing South Asian demographics. And in a testament to this burgeoning section of the population, there are over 50 South Asian grocery stores and over 75 Indian restaurants located in this target market.

The menu, service style and ambiance of Clay Pit has been created to appeal primarily to a traditional diner while also appealing heavily to adventurous, carefree and health-conscious diners as well. The concept should especially attract middle to high income diners with single and family households.

Marketing Strategy

Overview

The success of Clay Pit will be achieved by serving great food, providing friendly service and employing an aggressive marketing plan to build customer traffic. Today's market requires more than just good food and service to make a restaurant successful. At Clay Pit we will constantly strive to enthusiastically win more customers by being proactive rather than reactive in our marketing efforts.

Management will endeavor to create and maintain a positive, appealing image for the restaurant. This image will be consistently portrayed throughout all marketing channels and sales promotions. The following exemplifies some of the tactics we will use to drive more sales.

Customer Database

Clay Pit will aggressively seek to build a database of our guests. Guests will have an opportunity to be included in the database so they can participate in our promotions such as frequent diner program; email notification of upcoming specials; coupons; etc. The database will be gathered and maintained by software to be determined. We will gather names in a variety of manners including staff requests; business card drop for free lunch; guest's sign up book with promotional signage; menu insert promotion; etc.

Clay Pit will respect our guest privacy by confidentially protecting personal information we collect. See Appendices for our customer Privacy Policy.

Frequent Diner

The restaurant's marketing plan will include an active Frequent Diner program. The program will allow us to reward our guests for their continued patronage. The program shall have flexibility to allow us to be creative in our reward structure. Additionally, it should allow us to adapt to changing market trends.

We anticipate implementing a Frequent Diner program as a function of our POS (Point of Sale) system. Several of the major POS systems have this feature. Alternatively, there are several stand alone programs that the management team will review. The management team will thoroughly review each program to determine which system most effectively meets the requirements to make Clay Pit successful.

Email Campaign

We anticipate capitalizing on our customer database by instituting an effective email marketing strategy. We will give our customer the option to receive email communications from our restaurant. Customer's privacy will be protected and we will not email our customers without their permission.

Our email marketing strategy will include an awareness not to inundate our guests with email. Promotional content will be developed with the goal of enticement versus quantity.

The program should incorporate tools to measure effectiveness and customer satisfaction.

Mailer campaign

Clay Pit will further take advantage of our customer database by also implementing a consistent direct mail strategy. This strategy will include promotions such as sending a birthday card to our guests; sending anniversary invitations with R.S.V.P.; monthly coupons; monthly or quarterly newsletter; catering promotions; etc.

We will seek the use of software (to be determined) to assist us in the implementation of the campaign.

Community/Charity Involvement

The General Manager will be responsible for identifying community organizations such as churches, sports teams and other clubs located in the market. Clay Pit will have an active role in the promotion of these organizations through participation, donations and sponsorship. Representatives of Clay Pit will be available from time to time to take active leadership roles when feasible.

Business Relationships

The concept of Clay Pit lends itself to obtain favorable benefits from strategic business relationships. Our appeal as a medium to expensive fine dining establishment positions us as a likely destination for business lunch diners; workers during lunch; clients or employees of businesses. Possible relationships include an affiliation with Texas Instruments, Nortel Networks & Cisco Systems etc. to name a few.

The General Manager and Managing Partners will actively pursue business relationships that will be beneficial to Clay Pit.

4 Walls Marketing

In house marketing will be heavily promoted at Clay Pit. Management will constantly find methods to promote the restaurant to our guests on a daily basis.

Our staff will be trained for and encouraged to promote suggestive selling techniques. Up selling to our customers will be emphasized.

We will also use table tents, indoor signage, menu inserts, business card drawing, announcements, staff conveyance, table visits, etc. to further promote Clay Pit.

Advertising

The restaurant will adopt an aggressive advertising strategy. Outdoor signage for Clay Pit will have elaborate signage designed within allowable limits to achieve maximum exposure.

Clay Pit will utilize traditional and non-traditional methods of advertising. The mediums could be in Radio, Newspapers, Yellow Pages, magazines & Internet etc.

Overview

Management will establish sound operating guidelines by which to conduct the day to day operations for Clay Pit. Policies, systems and procedures will be adopted and documented using the previous experiences of the management team.

Staffing

Clay Pit is expected to employ from 15 to 25 full and part-time employees. Management will adopt an effective interview process designed to staff the restaurant with highly qualified people for each position. Each applicant will be rated and evaluated according to a pre-defined set of standards adopted for each position.

Expected staffing levels for both full and part time positions for the restaurant are shown in the following table:

Position	Full Time #	Part Time #
Managing Partner	1	
General Manager	1	
Kitchen Manager	1	
Line Cooks	3	
Prep Cooks	2	
Dishwashers	2	1
Hostess	2	2
Servers	8	4
Bartenders	1	1
Bussers	2	2

Training

A thorough training program will be adopted for every position in the restaurant. Highly qualified people filling those positions will be provided training materials and personal instruction. They will learn the Clay Pit method of how to operate a successful restaurant.

Newly hired personnel will be instructed in customer service, safety, and health laws in addition to the job functions of their respective positions. Training manuals for each position will be edited to reflect the unique requirements of Clay Pit.

Daily Operations & Production

Clay Pit will be opened 7 days a week for lunch and dinner necessitating staggered shifts. Schedules will be written by general manager and posted every two weeks. The schedules will be written in a manner that allows management to increase or decrease hourly labor according to sales volume in order to maintain a consistent labor cost control.

Designated management and kitchen staff will report for work a few hours before opening to prepare for opening.

The menu will be created in a manner to allow the preparation of many recipe ingredients to be done ahead of time. Proper labeling and rotation techniques, accompanied by ample storage facilities will ensure that high quality prepared product will be sufficiently available to meet the demands during peak business hours. Replenishment and ongoing preparation will continue during off peak business hours.

General Manager will be responsible for ordering, receiving and maintaining sufficient inventory to meet production demands. Ordering schedules will be staggered with perishable products being ordered multiple times per week to preserve freshness. Standard grocery and supply orders will be ordered less often, according to a predetermined schedule and storage capacity.

Service staff will arrive at staggered intervals, allowing sufficient time to prepare for anticipated customer traffic.

Management will adopt the use of operational checklists to verify that each work shift has been properly prepared for and to insure the operational standards are followed before, during and after work shifts.

The table service style of Clay Pit is by design intended to complement the guests overall perception of the restaurant, creating a designed guest experience. The restaurant layout, including the dining room, bar, kitchen and serving line, will be designed for efficiency and flexibility to accommodate the fluctuation in customer traffic and peak meal periods.

The production of our menu and servicing of the guest begins with the arrival of the guest. The guest should be greeted by a seating hostess promptly. Depending upon seating availability the guest will either be seated immediately or asked to wait in the lobby or bar until their table is ready. Awaiting guests will be able to order refreshments in the bar (lounge). Once their table is ready, the guest will have the option to either pay their tab or have it transferred to their table via the POS system.

Once seated, the guests should be quickly acknowledged by a member of the service staff. Beverage orders will be requested and ordered through the POS system. A service bartender will receive the order via of a designated order printer. Once prepared, the server will deliver the drinks to the guests.

The primary server will then inform the guests of our specials and then suggest selections from our appetizer menu. Appetizer orders will be entered into the POS

system and printed at the appropriate stations in the kitchen including the expeditor station.

The expeditor will ensure that the targeted production time of 3 to 5 minutes for appetizers is met for each order. Available servers will deliver the appetizers to the table and serve according to the designated guest positions. The primary server will then request salad and entrée orders. Again, all orders received will be entered into the POS system and orders will print out at the appropriate kitchen or bar station. The expeditor will ensure ticket times are kept within the 10 to 15 minute acceptable time parameters for entrée service, 3 minutes for salad service.

Available servers will deliver the food according to the designated guest position. Constant monitoring of the table by all staff will ensure that dirty dishes are cleared promptly and drinks refilled regularly.

The primary server, upon the clearing of all completed dishes, will request dessert or after dinner drink orders. Orders will be processed accordingly and within the acceptable time parameters. The server will monitor the table to determine the proper time to present the guest check. The customer will be given a few moments to review and prepare payment to the server. The server will make change or process credit cards as required and return the authorized card voucher to the guest.

Once the guest has left the table, the service staff will immediately clean the table and prepare it for the next seating.

The kitchen preparation line has been designed to be operated by a minimum staff of 6 line cooks/servers and a maximum of 8 line cooks/servers. This design allows line staffing to be adjusted to the business volume.

Shift changes for all staff will entail cleanup, restocking and preparation. All monies will be settled at the end of each shift. The closing shift will involve designated closing duties that will leave the restaurant clean and fully prepared for the next day opening crew.

Customer Service

Customer service at Clay Pit will be given special emphasis throughout the operation. Customer surveys estimate that only 1 in 20 customers that have a problem in a restaurant will tell management about it. It will be our goal to provide a product in a manner that exemplifies highly responsive and proactive customer service.

Training programs will include specific material to teach our employees about service attitudes, customer perception and how to deal with guest complaints. Management will conduct periodic staff meetings intended to review policy, increase guest satisfaction and to keep a general line of communication between staff and management.

All guest complaints will be empathetically acknowledged by the staff and immediately referred to management. Programs will be in place to systematically deal with various types of guest complaints. More serious complaints will be documented and kept on file.

Suppliers

Management will establish relationships with qualified suppliers (vendors) that can provide reasonably priced product, delivered according to the schedule that benefits the restaurant. Alternate suppliers will be identified for use if the regular supplier cannot deliver the products needed.

Management Controls

Management will practice sound management procedures in order to control costs, insure quality of product and provide friendly customer service. The following systems will be used by management:

POS System. Careful evaluation and dutiful research will be used in the selection of a POS (point of sale) system that best meets the needs of Clay Pit. The POS system will also be the control center to regulate the flow of service and item preparation. Built-in cash controls will help in tracking sales and receipts.

Time & Attendance System. The restaurant will use an automated time and attendance system. Management will evaluate systems that are integrated into the POS system as well as stand alone time clock systems. Hourly labor cost control and the ability to transfer information to our payroll processing will be key factors in system selection.

Scheduling System. Management will adopt a scheduling system that expedites the preparation of schedules, reflects anticipated labor budgets, and helps to regulate labor cost.

Operations Checklists. The restaurant will be managed with the use of various checklists. Consistent use of checklists will help to maintain quality control while ensuring that established procedures are followed. Checklists will be used by various personnel for customer service, purchasing, receiving and storage, preparation, cleaning, shift changes, opening and closings.

Order Guide. The restaurant will use an item specific order guide to track order history and maintain designated levels of product in inventory.

Weekly Inventory. Management will conduct a weekly inventory to determine valuation for use in the preparation of weekly profit and loss reports.

Daily Inventory Tracking. Daily inventory will be taken on specific items. Movement will be compared to sales data to ensure designated products have been properly accounted for.

Cash Audits. Management will conduct periodic cash audits for all cashier stations. Surprise shift audits are an effective tool to determine cashier/bartender under ringing.

Mystery Shopper. The restaurant will engage the service of a secret shopper service from time to time. The mystery (secret) shopper is an effective tool to get a customer's

perspective of the average guest experience. Feedback will help management to constantly improve customer service.

Safety Reviews. Periodic safety assessments will be performed to ensure that employees and guests are not exposed to dangerous or harmful conditions or actions.

Liability Reviews. Periodic assessments will also be done to evaluate the liability exposure of the restaurant. Alcohol awareness, employee relations and guest treatment will be scrutinized from time to time.

Administrative Systems

Daily Cash Control. Sales and receipts recorded by the POS system will be compared to actual cash and credit card deposits on a daily basis. Acceptable over/short amounts will be limited to \$5.00 per day. Discrepancies greater than \$5.00 will prompt management to conduct an immediate audit to account for the difference. Monthly totals will be compared to actual P&L statements for accuracy.

Cash, debit card and credit card receipts will be deposited in a deposit account that is kept separate from the general operating account. Transfers to the general operating account will be made as necessary. Separation of the two accounts is intended to aid in account reconciliation and cash flow management.

Weekly Prime Cost Report. The General Manager will prepare a weekly report that shows the gross profit margin after cost of goods sold and labor cost has been deducted from the sales revenue. Proper control of the prime cost is the single most effective measure of management's ability to operate the restaurant. Weekly monitoring allows for quick reaction to adverse cost ratios.

Purchasing Records/Payables. The General Manager will process and record invoices and credits daily. Reports detailing cash expenditures, payments by check, and accounts payable transactions will be readily available. Check disbursements will be prepared by General Manager. Check signing authority for the general operating account will be given to General Manager/Managing Partner.

Accounting System/Service. Management will be responsible for the timely preparation of monthly financial statements, including monthly Profit & Loss and Balance sheet. To accomplish this task Clay Pit will contract with the Accounting firm of Nagaraj & Associates.

Payroll Processing. Payroll checks will be issued bi-weekly. The General Manager will run reports from the time & attendance system, make necessary adjustments, and prepare for transfer to the payroll system. Payroll will be processed by in house accounting program.

Investment Analysis

Source of Funds

Funding for the venture will be provided by contributions from the Managing Partners. The proposed sources of funds are as follows:

Source of Funds	Investment Type	Amount
Managing Partner – Devanand Addagatla	Capital contribution	\$150,000
Managing Partner – Rajakumari Rao	Capital contribution	\$150,000
Managing Partner – Prasad Atmakur	Capital contribution	\$150,000
Total		\$450,000

Growth Plan

Expansion Plans

Clay Pit's appealing menu, comfortable atmosphere and reasonable prices will position the concept for broad customer appeal in a wide range of markets.

The managing partner(s) will focus first and foremost on developing this concept to achieve a successful return on investment without the need for expansion. However, because of its broad appeal, the concept does lend itself to expansion opportunities. The comprehensive approach we've taken in the creation of the business philosophy, systems and controls will enhance our ability to deal with the expansion of the concept.

Financial Projections

Sales Forecasts

We believe the biggest opportunity for increasing sales is in outside catering. The current ownership was focused on establishing a well known name within the Metroplex location. Having accomplished this, we can now leverage the name recognition to begin an aggressive marketing campaign for catering service to the surrounding businesses and hospitals. In addition, lunch buffet menu will also be enhanced to grab a greater share of the lunch business.

Catering generates higher profits due to menu price which lowers food and labor cost. The current revenue from catering accounts for less than 4% of the gross sales. We anticipate increasing that to 10% - 15% of gross sales, the revenue possibility for which could range from \$150,000 - \$200,000 per year.

Resumes

Rao Rajakumari - Managing Partner

Summary:

- Over 8 years of management experience in a high volume restaurants as a managing partner.
- Extensive knowledge of food and service industry.
- Proven entrepreneurial skills in establishing a successful restaurant project.
- Extensive experience interfacing with managers, waiters, kitchen staff and guests.
- Excellent leadership qualities and good communicator with strengths that include resolving customer complaints, training staff, efficient problem solving and logically implementing practical solutions.
- Excellent problem identification and resolution skills
- Technical Writing: Creating Publications for Technical Manuals, Installation Guide On-line product help, design specifications and Requirement Specifications Documents.

Restaurant Experience

**Sarovar Inc.,
301 S. Abbott Ave.
Milpitas, CA**

1994 – 2003

Role: Managing Partner.

Responsibilities:

- Accountable for budgeting, cost control, payroll, general accounting, and full profit and loss.
- Developed marketing campaigns to increase visibility of the restaurant, analyzed market demographics defined target market and determined advertising strategies.
- Planned menus estimated food and service costs and purchased initial inventory for all branches.
- Investigated quality and service concerns and suggested resolutions achieving customer satisfaction and contributed towards repeat business.
- Promote the business among corporate clientele and successful in adding around 250 corporate clientele for their catering needs.
- Created new business through community involvement and active public relations.
- Involved in recruiting senior staff and training them in activities relating to Indian food industry.
- Organize charitable distribution of food in community and senior citizen gatherings.
- Apply and acquire all required permissions and renewals of restaurant and beverage licenses and communicate efficiently with revenue and city officials.

- Developed staff manuals for each position i.e. managers, servers, bartender, and BOH personnel.
- Focused on customer needs in order to develop market and execute new products and services.
- Planned and managed significant re-modeling projects that enhanced the ambiance of the facilities.

IT Experience

Countrywide Home Loans

2004 – Till Date

Role: Quality Assurance Manager

Responsibilities:

- Ensured that appropriate project management reporting mechanisms are in place
- Ensures that the project is managed using appropriate management tools
- Monitored external developments in order to recognize overlapping solutions and encourage standards
- Facilitate recognition of individual contributions to the project
- Report back to the upper management, summarising the status and establishing goals
- Convene and chairs the Project Management Meetings
- Report to the Project Manager on matters relating to any project deliverables and milestones defined within his or her purview.
- Collaboratively work with Infrastructure Services Associates (LoadRunner) to define, formalize and communicate standards, templates, process, and timelines to support Technical Stability Testing (performance, capacity, etc. testing)
- Lead and facilitates all Technical Stability testing operatives to validate the deliverables, technical stability and compatibility within the established infrastructure
- Partner with applicable Business and IS Leads to review modifications, interfaces, conversions and change requests and develop reuse and execution procedures as needed
- Communicate application test activity status and negotiates migration towards production, including Issue/Defect metrics, test coverage metrics, and critical path to Applications Quality Assurance Lead, Technical Stability Test Group Lead, PMO, Development, Business Teams, and Stakeholders as required.

Education: Masters in Business Administration Osmania University
MS (Computer Science), California State University Hayward, California.

Navin Reddy – General Manager

Summary

Eight years of management experience in three high volume restaurants as a regional manager.

Extensive knowledge of food service industry.

Proven entrepreneurial skills in establishing three successful restaurant projects.

Extensive experience interfacing with managers, waiters, kitchen staff and guests.

Excellent leadership qualities and good communicator with strengths that include resolving customer complaints, training staff, efficient problem solving and logically implementing practical solutions.

Certification

Serve Safe certified

Experience

Independent Restaurant Consultant **Jan 2005 - Present**

Manager **Jun 2004 – Dec 2004**

El Torito (Real Mex Restaurants)

General Manager **Feb 1996 – Apr 2004**

Sarovar Inc., 301 S. Abbott Ave. Milpitas, CA.

Responsibilities:

- Responsible for recruiting managers and hiring new kitchen and serving staff. Orient staff and oversee their training. Schedule staff work hours.
- Ensured restaurants comply with all state, federal and local laws and regulations in the areas of health, safety, labor, and employment.
- Responsible for recruiting managers for various branches.
- Advise and consult with managers regarding effective utilization of resources to achieve desired performance results in the areas of quality, guest service, food costs, labor hours, safety, security, cleanliness and product handling.
- Responsible for evaluating performance of managers.
- Design various promotions to attract individuals as well as corporate customers.
- Performed regular administrative tasks that include conducting audits, authorizing vacation and sick days, approve candidates for promotions, develop action plans, review cash and sales activity and perform other day to day business management activities.
- Train banquet, kitchen and corporate catering managers.

**Banquet and Catering Manager
'96**

Mar '95 – Jan

Sarovar Inc.

Responsibilities:

- Make reservations for banquet parties, Interface with corporate clients and plan corporate meetings.
- Increased sale by 15-20% by introducing corporate catering and delivery.
- Orders banquet supplies like beverages, tablecloth, napkins, silverware and supervise and schedule banquet staff for the weekends.
- Manage banquet arrangements like decorators, entertainment providers and security personnel.
- Monitor the interaction between staff and customers and make sure that safety standards and liquor laws are obeyed.

Kitchen Manager

June '94 – Feb '95

Sarovar Inc.

Responsibilities:

- Check the deliveries of fresh food for quality. Order supplies of non-food items, such as dishes, cooking utensils, cutlery and cleaning products.
- Make sure that kitchen and dining areas are cleaned according to standards. Keep records of these practices for health inspectors.
- Arrange for maintenance and repair of equipment and other services.
- Supervise the kitchen and dining room. For example, oversee the food preparation, check the quality and size of the servings. Monitor food preparation and methods.
- Select new dishes for the menu on a regular basis. Consider what items have been popular in the past, and what foods on hand must be used. Analyze recipes and estimate costs for food and labor and assign menu prices.

Asst. Manager

Oct' 93 - May '94

Student Union, Cal-State, Hayward.

Education

B.S. Economics

California State Hayward, CA.

[Please click on the document link below to view the Clay Pit menu.](#)



Clay Pit - Dallas
Menu.pdf

ASSIGNMENT OF LEASE

LEASE:

Date: June 13, 1991.
Landlord: Town of Addison, Texas.
Tenant: Prufrock Restaurants, Inc.
Premises: 4460 Beltline Road, Addison, Texas
[Ground Lease]

ASSIGNOR:

Amar Unlimited, Inc.
4460 Beltline Road
Addison, Texas 75001

ASSIGNEE:

Twin City Hotels, LLC
15891 Christopher Lane
Frisco, Texas 75035-3625

For and in consideration of Ten Dollars and other good and valuable consideration paid by ASSIGNEE to ASSIGNOR, the receipt of which is hereby acknowledged, ASSIGNOR does hereby TRANSFER and ASSIGN to ASSIGNEE all of the rights of ASSIGNOR (as TENANT) under the LEASE.

TO HAVE AND TO HOLD all and singular the assigned premises unto said ASSIGNEE, its successors and assigns, and the undersigned does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the assigned premises unto ASSIGNEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ASSIGNOR represents and warrants (i) that the Lease is valid and enforceable, (ii) that the same is current in all its provisions, (iii) that ASSIGNOR is not in default under any of the terms or provisions of the Lease, (iv) that there are no oral or other written agreements pertaining to the Lease that are not incorporated in the Lease itself, (v) that no prior assignments have been made by ASSIGNOR, and (vi) that ASSIGNOR is not currently obligated under the Lease for any sums or liabilities, other than the rent as specified in the Lease (which rent is current). These warranties and representations shall survive the execution and delivery of this Assignment.

ASSIGNOR agrees to indemnify and hold ASSIGNEE harmless from any and all claims, demands or losses suffered by ASSIGNEE (i) by virtue of or resulting from any of the above warranties and representations being untrue, or (ii) from reliance upon such representations and warranties by ASSIGNEE in connection with this Assignment.

In consideration of this Assignment, ASSIGNEE hereby agrees to assume and discharge

the obligations of TENANT (ASSIGNOR) under the Lease and agrees to be bound by the terms and provisions of such Lease and to indemnify and hold ASSIGNOR harmless from all claims which might arise by virtue of any failure of ASSIGNEE to observe and perform any of the duties of TENANT under such Lease from and after the date hereof.

This Assignment is subject to the consent of Landlord, and shall not become effective or binding until and unless such consent has been given by Landlord. This Assignment is further contingent upon the closing of the sale and purchase of the business known as the Clay Pit, located at 4460 Beltline Road, Addison, Texas, between Assignor, as Seller, and Assignee, as Purchaser.

This Assignment covers a "ground lease" only and is to be assigned concurrent with an assignment of a "building lease" (from Assignor herein to Assignee herein) which covers improvements situated on the Premises. A copy of each lease (with amendments and restatements) is attached hereto as Exhibit "A" all of which is incorporated herein by reference for all purposes. In order for either Assignment to be effective and binding, both Assignments must be executed, consented to by the respective Landlords and accepted by Assignee.

DATED effective the _____ day of October, 2007.

ASSIGNOR:

Amar Unlimited, Inc.

By: _____

Title:

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of October, 2007, by _____ of Amar Unlimited, Inc. on behalf of said corporation.

Notary Public, State of Texas

CONSENT

Landlord hereby consents to the above Assignment. If Assignee should default in the performance of any of the duties or obligations under the Lease, Landlord agrees to give Assignor written notice thereof and fifteen (15) days within which to cure the default if it is of a monetary nature, and thirty (30) days within which to cure the default if it is of a non-monetary nature.

The Town of Addison, Texas

By: _____

Title:

ACCEPTED BY ASSIGNEE:

Twin City Hotels, LLC

By: _____

Title:

ASSIGNMENT OF LEASE

LEASE:

Dated: April 29, 2002.
Landlord: CNL APF Partners, LP.
Tenant: Amar Unlimited, Inc.
Premises: 4460 Beltline Road, Addison, Texas
[Building Lease]

ASSIGNOR:

Amar Unlimited, Inc.
4460 Beltline Road
Addison, Texas 75001

ASSIGNEE:

Twin City Hotels, LLC
15891 Christopher Lane
Frisco, Texas 75035-3625

For and in consideration of Ten Dollars and other good and valuable consideration paid by ASSIGNEE to ASSIGNOR, the receipt of which is hereby acknowledged, ASSIGNOR does hereby TRANSFER and ASSIGN to ASSIGNEE all of the rights of ASSIGNOR (as TENANT) under the LEASE.

TO HAVE AND TO HOLD all and singular the assigned premises unto said ASSIGNEE, its successors and assigns, and the undersigned does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the assigned premises unto ASSIGNEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ASSIGNOR represents and warrants (i) that the Lease is valid and enforceable, (ii) that the same is current in all its provisions, (iii) that ASSIGNOR is not in default under any of the terms or provisions of the Lease, (iv) that there are no oral or other written agreements pertaining to the Lease that are not incorporated in the Lease itself, (v) that no prior assignments have been made by ASSIGNOR, and (vi) that ASSIGNOR is not currently obligated under the Lease for any sums or liabilities, other than the rent as specified in the Lease (which rent is current). These warranties and representations shall survive the execution and delivery of this Assignment.

ASSIGNOR agrees to indemnify and hold ASSIGNEE harmless from any and all claims, demands or losses suffered by ASSIGNEE (i) by virtue of or resulting from any of the above warranties and representations being untrue, or (ii) from reliance upon such representations and warranties by ASSIGNEE in connection with this Assignment.

In consideration of this Assignment, ASSIGNEE hereby agrees to assume and discharge

the obligations of TENANT (ASSIGNOR) under the Lease and agrees to be bound by the terms and provisions of such Lease and to indemnify and hold ASSIGNOR harmless from all claims which might arise by virtue of any failure of ASSIGNEE to observe and perform any of the duties of TENANT under such Lease from and after the date hereof.

This Assignment is subject to the consent of Landlord, and shall not become effective or binding until and unless such consent has been given by Landlord. This Assignment is further contingent upon the closing of the sale and purchase of the business known as the Clay Pit, located at 4460 Beltline Road, Addison, Texas, between Assignor, as Seller, and Assignee, as Purchaser.

This Assignment covers a "building lease" only and is to be assigned concurrent with an assignment of a "ground lease" (from Assignor herein to Assignee herein) which covers the premises upon which the building is situated. A copy of each lease (with amendments and restatements) is attached hereto as Exhibit "A" all of which is incorporated herein by reference for all purposes. In order for either Assignment to be effective and binding, both Assignments must be executed, consented to by the respective Landlords and accepted by Assignee.

DATED effective the _____ day of October, 2007.

ASSIGNOR:

Amar Unlimited, Inc.

By: _____
Title:

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of October, 2007, by _____ of Amar Unlimited, Inc. on behalf of said corporation.

Notary Public, State of Texas

CONSENT

Landlord hereby consents to the above Assignment. If Assignee should default in the performance of any of the duties or obligations under the Lease, Landlord agrees to give Assignor written notice thereof and fifteen (15) days within which to cure the default if it is of a monetary nature, and thirty (30) days within which to cure the default if it is of a non-monetary nature.

CNL APF PARTNERS, LP.

By: _____

_____ Title:

ACCEPTED BY ASSIGNEE:

Twin City Hotels, LLC

By: _____

Title:

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



JOHN M. HILL
214.672.2170
JHILL@COWLESTHOMPSON.COM

March 23, 2005

Mr. Mario Canizares
Assistant to the City Manager
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

RE: Clay Pit

Dear Mario:

Enclosed please find one fully executed original of the Amendment to Lease in connection with the Clay Pit Restaurant for the Town's files, which I received today from CNL.

If you have any questions or comments, please give me a call.

Very truly yours,



John M. Hill

JMH/yjr
Enclosure

cc: Mr. Ken C. Dippel, w/firm

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AMENDMENT TO LEASE

This Amendment to Lease ("Amendment") is made this 25th day of February, 2005 (the "Effective Date"), by and between the Town of Addison, Texas (the "City"), Amar Unlimited, Inc., a Texas corporation ("Amar"), and CNL APF Partners, LP, a Delaware limited partnership ("CNL") (together, the "Parties").

Recitals:

1. The City is the owner of certain real property located in the Town of Addison, Dallas County, Texas, as more particularly described in Section 1.1 of the Lease (and referred to herein as the "Property").

2. The City, as Landlord, and Prufrock Restaurants, Inc. ("Prufrock"), as Tenant, entered into a Lease of the Property on June 13, 1991 (the "Lease"), a true and correct copy of which is attached hereto as Exhibit 1. The subject of the Lease is the operation of a restaurant on the Property.

3. On September 30, 1997 the City, DenAmerica Corp. ("DenAmerica", successor to Prufrock and predecessor to Phoenix Restaurant Group, Inc. ("PRG"), and CNL American Properties Fund, Inc. (predecessor to CNL) entered into that certain Tri-Party Agreement (the "Tri-Party Agreement") which sets forth certain terms regarding the Lease, including a consent by the City to the assignment of the Lease to CNL American Properties Fund, Inc. in accordance with the terms of the Tri-Party Agreement.

4. In October, 2001 PRG filed a bankruptcy proceeding under the United States Bankruptcy Code in United States Bankruptcy Court for the Middle District of Tennessee, Case No. 301-12036, 12164, 12165, 12166, 12163 and 12167. On May 16, 2002 the Bankruptcy Court entered an Order authorizing PRG to assume and assign its interest in the Lease and the Tri-Party Agreement. Pursuant to that Order, PRG entered into an agreement with Amar in which PRG agreed to assign to Amar, and Amar agreed to assume, the obligations of PRG under the Lease and the Tri-Party Agreement. The closing of the assignment and assumption occurred on August 21, 2002 (the "PRG/Amar Closing").

5. In connection with the PRG/Amar Closing, Amar and CNL entered into that certain Amended and Restated Lease Agreement (as amended), whereby CNL leased to Amar the restaurant located on the Property (the "Restaurant Lease").

6. Pursuant to the above, Amar is the current Tenant under the Lease and under the Restaurant Lease, and has requested from the City certain modifications to the Lease and from CNL certain modifications to the Restaurant Lease, including a temporary reduction of rent for the Property (as set forth herein) and an extension of the Lease until the end of 2012.

7. The City, Amar, and CNL now desire to amend the Lease as set forth in this Amendment to Lease.

NOW, THEREFORE, the Town of Addison, Texas, Amar Unlimited, Inc., and CNL APF Partners, LP agree as follows:

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

Section 2. Amendment to Lease. Notwithstanding anything in the Lease (as amended) to the contrary, the Parties agree as follows with respect to the Lease:

A. *Rent Adjustment*.

(1) For a period of twelve (12) consecutive calendar months, beginning with and including March, 2005 and ending with and including February, 2006 (the "Rent Reduction Period"), the Minimum Rent monthly rental amount shall be Two Thousand Seven Hundred Eight and 34/100 Dollars (\$2,708.34), payable in advance on or before the first day of each calendar month. Following the expiration of the Rent Reduction Period and prior to the beginning of the Rent Recovery Period (such period of time being from and including March, 2006 and ending with and including September, 2006 (the "Regular Rent Period")), the Minimum Rent monthly rental amount shall return to and be the applicable amount for such period of time set forth in Section 3.1(d) of the Lease (such amount being Five Thousand Four Hundred Sixteen and 67/100 Dollars (\$5,416.67)).

(2) Following the expiration of the Regular Rent Period, beginning with and including October, 2006 and ending with and including September, 2011 (being (60) consecutive calendar months) (the "Rent Recovery Period"), the Minimum Rent monthly rental amount shall be Six Thousand Three Hundred Seventy Five and No/100 Dollars (\$6,375.00), payable in advance on or before the first day of each calendar month during the Rent Recovery Period.

(3) Following the expiration of the Rent Recovery Period, the Minimum Rent monthly rental amount shall return to and be the amount set forth in Section 3.1(d) of the Lease, the amount being Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33), through the end of the Lease (subject, however, to the terms of the Lease).

B. *Term Adjustment*. The Term of the Lease, currently scheduled to end on February 1, 2012, shall end on December 31, 2012 (subject, however, to the termination provisions of the Lease).

Section 3. No Other Amendments. Except as hereby amended, the Lease and all of its terms, conditions, and provisions shall remain unchanged and in full force and effect.

Section 4. Authority to Execute. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

Section 5. Effective Date. This Amendment shall be deemed effective as of the date first set forth above (the Effective Date).

IN WITNESS WHEREOF, the undersigned hereto have executed this Amendment to Lease as of the day and year first above written.

TOWN OF ADDISON, TEXAS

By: Ron Whitehead
Ron Whitehead, City Manager

ATTEST:

By: C Moran
Carmen Moran, City Secretary

AMAR UNLIMITED, INC.

By: J Saini
Printed Name: Jasdeep Saini
Title: Corp. Secretary

CNL APF PARTNERS, LP, a Delaware limited partnership

By: **CNL APF GP Corp.**, a Delaware corporation, as General Partner

By: Curtis B. McWilliams
Printed Name: Curtis B. McWilliams
Title: President

EXHIBIT 1

LEASE

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

This Lease (hereinafter referred to as "Lease" or "Agreement") made and entered into on this 13 day of June, 1991 by and between THE TOWN OF ADDISON, a Texas municipality, hereinafter called "Landlord", and PRUFROCK RESTAURANTS, INC., a Texas corporation, hereinafter called "Tenant", which provides as follows:

SECTION 1. GRANT OF LEASE AND TERM

1.1 Landlord does hereby lease and demise unto Tenant that certain real property in the Town of Addison, Dallas County, Texas, as shown in Exhibit "A" attached hereto with the property being leased identified as the cross-hatched area in Exhibit "A" attached hereto (hereinafter referred to as the "leased premises" or "premises"), such description being subject to amendment as set forth in Paragraph 5.3 hereof. The property shown on Exhibit "A" is the property of Landlord and is intended for future use as a municipal development. This Lease shall be for a term of Twenty (20) years (the "Initial Term") to begin on the "Commencement Date" as defined in Paragraph 5.6 hereof. The term "Lease Year" shall be the one (1) year period to begin on the Commencement Date for each such respective year.

SECTION 2. HOLDOVER

2.1 If Tenant remains in possession of the premises after expiration of any lease term without executing a new lease or exercising its option to extend, such holding over shall be construed as a tenancy from month-to-month, subject to all covenants and conditions of this Lease, except that rental shall be at one hundred fifty percent (150%) of the then current minimum rent. Upon such holding over, Tenant must vacate the premises within thirty (30) days after receiving written notice from Landlord to vacate.

SECTION 3. RENT

3.1 The Minimum Rent for this Lease during the Initial Term and extension periods shall be payable in monthly installments, with each installment payable in advance on or before the first day of each calendar month during the Initial Term. The amount of Minimum Rent to be paid by Tenant to Landlord shall be pursuant to the following:

- (a) for the first five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Four Thousand Five Hundred Eighty-three and 33/100 Dollars (\$4,583.33).
- (b) for the second five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand and No/100 Dollars (\$5,000.00).
- (c) for the third five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Four Hundred Sixteen and 67/100 Dollars (\$5,416.67).

- (d) for the fourth five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33).

3.2 In addition to the Minimum Rent specified in Paragraph 3.1, Tenant shall pay to Landlord, for each Lease Year during the remainder portion of this Lease and any extension periods, percentage rental determined by multiplying three percent (3%) times the total Gross Sales made in or from the leased premises during the particular Lease Year and then subtracting from the product thus obtained the Minimum Rent paid by Tenant to Landlord for such Lease Year.

Within thirty (30) days after the close of a Lease Year Tenant shall furnish to Landlord a sales report certified to be correct by an officer of Tenant, and if the sales disclosed thereby are sufficient to require a payment under this Paragraph such payment shall accompany the report.

The term "Gross Sales" as used herein shall be construed to include the entire amount of the sales price, whether cash or otherwise, of all sales of merchandise (including gift and merchandise certificates); services and other receipts whatsoever of all business conducted in or from the leased premises, including mail or telephone orders received or filled at the leased premises; deposits not refunded to purchasers; orders taken, although said orders may be filled elsewhere; sales by any sublessee, concessionaire or licensee or otherwise in the leased premises. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant receives payment from its customer. Gross sales shall not include, however, bona fide credits, and any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, sales to employees, nor shall it include the exchange of merchandise between the stores of Tenant, if any such exchanges are made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has therefore been made in or from the leased premises and/or for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the leased premises, nor the amount of returns to shipper's or manufacturer's, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant, nor sales of Tenant's fixtures, furniture, and equipment.

The sales reports shall be certified to be correct by an officer of Tenant. In the event Landlord is not satisfied with the statements of gross sales submitted by Tenant, Landlord shall have the right to have an independent Certified Public Accountant make a special audit of all books and records, which shall be located in Dallas County, Texas, pertaining to sales made in and from the leased premises; provided, however, said audit shall be limited to one time with respect to each Lease Year and must be conducted within two (2) years after the end of a Lease Year. Tenant shall have the right to submit any additional information as it may believe pertinent to any audit. If such audit discloses that Tenant understated Gross Sales by more than two percent (2%) over the amount submitted by Tenant, Tenant shall pay the reasonable costs for such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

3.3 Each installment of rent shall be payable to:

Town of Addison
P. O. Box 144
Addison, TX 75001

Attn: Finance Director

or at such other place as the Landlord may from time to time designate in writing.

3.4 If the Commencement Date as defined herein is not on the first day of a calendar month, the Minimum Rent for the period between the Commencement Date and first day of the next succeeding calendar month shall be apportioned at the monthly rental set forth above, and the amount so apportioned shall be payable on the Commencement Date. Likewise, the Minimum Rent for the period between the first day of the last calendar month during the term and ending date of the Lease shall be apportioned at the then current monthly Minimum Rent.

SECTION 4. FORCE MAJURE

4.1 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, such party shall not be liable or responsible for, and therefore shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the respective party.

SECTION 5. IMPROVEMENTS

5.1 Tenant shall have the right during the term of this Lease, to erect, maintain, alter, remodel, reconstruct, rebuild and replace buildings and other improvements on the Leased Premises, subject to the following general conditions:

(a) The cost of any such work shall be borne and paid for by Tenant.

(b) The Leased Premises shall be, at all times, kept free of all mechanic's and materialman's liens except that Tenant may post a bond for the payment of any disputed claims.

(c) Landlord shall be notified of the time of commencement and the general nature of any work in excess of \$50,000.00 at the time of commencement.

(d) Nothing contained herein shall constitute Landlord's approval for purposes of obtaining building permits and Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications or that they comply with applicable building and fire codes.

(e) Upon termination of this Lease for any reason, all present and future installations, alterations, additions or improvements made in, on or to the leased premises, by any party, shall be deemed the property of Landlord and shall remain upon and be surrendered with the leased premises as a part thereof.

5.2 Tenant, at its sole cost and expense, shall bring all necessary utilities to the property.

5.3 Tenant, at its sole cost, shall obtain within twenty-one (21) days after the date of this Agreement a current topographical survey of the leased premises by a registered surveyor. The survey shall be staked and pinned on the ground and shall show all buildings, other improvements, easements (including public recording information), encroachments, restrictions, rights-of-way, sidewalks, highway, streets, roads, and utilities serving the property indicating size and location. The survey shall also contain a description of the easements granted under this Lease. Upon the Landlord's and Tenant's approval of the survey, it shall be substituted for the description of the leased premises in Exhibit "A" hereof.

5.4 The improvements referred to in Paragraph 5.1 above shall not be deemed to include any machinery, equipment, trade fixtures, signs, furniture, furnishings, decorations, restaurant equipment, shelving, showcases, mirrors, pictures, art objects, antique items, decorative light fixtures, mantles, and stained glass windows, or other similar items which may be installed, located or placed in the building by Tenant (whether "attached" to the building or not), and such items may be removed by Tenant from time to time in Tenant's sole discretion during this Lease and for a period of fifteen (15) days after termination of this Lease. Tenant shall repair the premises resulting from any damages caused by the removal of such items. Tenant may finance or refinance all or any part of its machinery, equipment, trade fixtures, signs, and other items listed above and in connection therewith may grant security interests in and liens upon such items, provided that Tenant shall not grant or place any liens upon the realty comprising the demised premises or Landlord's interests therein. Landlord hereby expressly waives any liens, constitutional, statutory or otherwise, which Landlord may have with respect to any such items, and Landlord will execute and deliver or cause to be executed and delivered such evidence of this waiver of lien as Tenant's equipment lender or lessor may request from time to time. The term "improvement" referred to in paragraph 5.1 shall include, but not be limited to, air conditioning, heating and ventilation systems, water heaters, plumbing apparatuses and other fixtures. The terms "machinery and equipment" used in this paragraph and other provisions of this Lease shall not include such improvements.

5.5(a) The parties hereto agree that this Lease is entirely contingent upon the leased premises being suitable for the restaurant Tenant intends to construct upon the demised premises. Consequently, notwithstanding anything to the contrary herein set forth, this Lease shall be null and void and neither party shall be under any obligation or liability one to the other in the event the Tenant in its sole judgment determines that for economic or other reasons the premises are not suitable for its restaurant or for the construction of its improvements and/or that it cannot obtain all permits necessary to construct and operate its intended restaurant, such permits and approvals specifically including, but not limited to, liquor licenses, sign permits, access points, and building construction permits. Tenant shall have sixty (60) days in which to inspect the leased premises and give written notice to Landlord that Tenant has determined that, in its judgment, the leased premises are not suitable for the restaurant it intends to construct and in such event this Lease shall terminate and neither party shall have any liability to the other. If Tenant shall not give the notice of termination within such sixty (60) days, the Tenant shall have waived its right to terminate pursuant to

this paragraph 5.5(a). As a part of Tenant's inspection, Tenant and its engineering consultants shall be permitted to come upon the leased premises to perform soil tests, inspections, and other studies, to be used by Tenant in determining feasibility of construction and to determine the environmental conditions of the premises and existing improvements. Tenant shall restore the premises to its condition prior to any such tests, and shall indemnify and hold Landlord harmless from any liens that may arise as a result thereof and for any damages to persons or property.

(b) Tenant shall have one hundred twenty (120) days from the date of this Agreement hereof in order to give written notice to Landlord that the necessary permits are not obtainable and in such event this Lease shall terminate and neither party shall have any liability to the other. Tenant shall apply for its building and zoning permits within sixty (60) days from the date of this Agreement. If Tenant shall not give the notice of termination within such one hundred twenty (120) days, the Tenant shall have waived its right to terminate pursuant to this paragraph 5.5(b).

5.6 If this Lease is not terminated as provided in paragraph 5.5 above, Tenant shall enter the premises and commence the construction of its improvements, and the rental hereunder shall commence upon the earlier of:

- (a) the date Tenant first opens for business on the premises to the public; or
- (b) One hundred twenty (120) days from the earlier date of (i) Tenant's waiver of its right to terminate pursuant to Paragraph 5.5(b) hereof, or (ii) the issuance of all permits necessary to construct the restaurant.

5.7 Tenant and persons, firms or corporations involved in the erection of building contemplated herein and Tenant's subtenants, employees, agents, servants, patrons, and suppliers may enter upon and work in said premises during the period prior to the "Commencement Date", and all covenants and conditions of this Lease shall be applicable except those pertaining to rental and taxes; no rental or other monetary payments being reserved or charged for such period prior to the "Commencement Date". Tenant shall hold Landlord harmless from any lien or claims for liens as a result of Tenant's action during such period.

SECTION 6. STATE OF THE TITLE, ZONING AND RESTRICTIONS

Landlord hereby warrants and represents to Tenant as follows:

6.1 Landlord is owner of the Leased Premises and authorized to execute this Lease. Tenant acknowledges that the Leased Premises are not zoned to permit construction of a restaurant serving alcoholic beverages, and Tenant agrees, at its sole cost and expense, to obtain such zoning.

6.2 No person other than Landlord has the right to lease the leased premises.

6.3 Landlord agrees that it has not and will not hereafter enter into or consent to any restrictive covenant or similar agreement substantially or materially affecting Tenant's use of the leased premises, except Landlord reserves the right to enter into a mutual reciprocal parking and access agreement with the Tenant on Landlord's adjacent property.

6.4 Tenant, within twenty-one (21) days following the date of this Agreement, shall obtain a Commitment for leasehold title policy applicable to the leased premises from a licensed Title Company (the "Title Company") and any easements serving the leased premises. Tenant shall have twenty-one (21) days thereafter in which to have the Commitment examined and to furnish Landlord notice in writing of any objections thereof. In case of valid objections to the title, Landlord shall have twenty-one (21) days within which to satisfy said objections, unless such time be extended by written agreement between the Landlord and Tenant. Landlord warrants that it shall in good faith exercise due diligence to cure title defects, if any, within the time provided, but such obligation shall not exceed \$1,000.00. In the event there is now or shall be in the future a Mortgage or Deed of Trust on the leased premises, Landlord shall provide a Non-Disturbance Agreement to Tenant in such form as Tenant may reasonably require. If there is a current Mortgage or Deed of Trust, Landlord shall deliver a Non-Disturbance Agreement within thirty (30) days after Tenant's receipt of the Title Commitment.

SECTION 7. USE BY TENANT

7.1 The leased premises shall be used for the operation of a restaurant with alcoholic beverage service or retail/service business. Tenant shall not commit waste on the leased premises, shall not maintain, commit or permit the maintenance or commission of a nuisance or lewd or indecent activities on the leased premises, or use all or part of the premises for any use or purpose in violation of any valid or applicable law, regulation or ordinance of the United States, State of Texas, Town of Addison, or other lawful governmental authority having jurisdiction over the leased premises. Tenant shall conform to all applicable laws and ordinances respecting the use and occupancy of the leased premises. In no event shall the leased premises be used or occupied by any business which Gross Sales shall exceed 40% from alcoholic beverages in any calendar year and Landlord shall be entitled to review Tenant's filings with state agencies to confirm such percentage of liquor sales. Tenant shall not conduct within the leased premises any fire, auction, going-out-of-business or bankruptcy sale. Tenant shall not permit any objectionable or unpleasant odors to emanate from the leased premises other than normal restaurant odors; nor place or permit any radio, television, loud speaker, amplifier or sound system or signs or devices emitting flashing lights, loud noises or vibrations on the roof or outside the leased premises; nor commit or permit waste or a nuisance upon the leased premises.

7.2 Tenant shall maintain its improvements in a neat and clean condition, shall keep sidewalks on the premises clean and free from rubbish, and shall arrange for the regular pick up of trash and garbage if such service is not provided by the City or County in which the leased premises are located. Tenant shall not permit rubbish, refuse, or garbage to accumulate or any fire or health hazard to exist about the premises, so long as this Lease is in effect and during any extension thereof. Trash and garbage dumpsters shall be screened from view.

7.3 During the first five (5) years of the original term of this Lease, Tenant shall in good faith continuously conduct and carry out in the entire Demised Premises the type of business described in Section 7.2 above except for periods resulting from fire or other casualty, or reasonable periods for repairs and alterations, all such repairs and alterations to be diligently pursued to completion. Beginning in the

sixth (6th) year of the original term of this Lease, if Tenant discontinues the operation of its business or vacates the Demised Premises for any continuous twelve (12) month period (other than as a result of fire or other casualty, for substantial restoration or alteration, such restoration, alterations or repairs to be diligently pursued to completion), Landlord may terminate this Lease and repossess the Demised Premises. Upon repossession, this Lease will terminate and neither party shall have any further obligation to the other except for the following:

Tenant shall forfeit all of Tenant's permanent improvements to the Demised Premises, but may remove its furniture, fixtures, equipment and all signs.

Landlord shall pay to Tenant at the termination date the unamortized value of its building and permanent improvements based upon a 20-year straight line basis from the Commencement Date.

7.4 Tenant shall procure, at its own expense, any permits and licenses required for the transaction of business on the leased premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

SECTION 8. MAINTENANCE, REPAIRS AND UTILITIES

8.1 At all times during the term of this Lease, Tenant will keep and maintain, or cause to be kept or maintained, all buildings and improvements which may be erected on the Leased Premises in a good state of appearance and repair, reasonable wear and tear and loss by casualty excepted, at Tenant's own expense. Tenant, at Tenant's expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Leased Premises.

8.2 Tenant shall, at its own cost and expense, pay all charges when due for water, gas, electricity, heat, sewer rentals or charges and any other utility charges incurred by Tenant in the construction and the use of the premises, unless caused by Landlord's negligence or misconduct, Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas electric current for light and power or telephone.

SECTION 9. ASSIGNMENT AND SUBLETTING

9.1 Tenant shall have the right to assign or sublease the leased premises to any corporation controlling, controlled by or under common control with Tenant, to any corporation with which Tenant merges or consolidates, to any franchisee of Tenant or to any person or entity acquiring all or substantially all of the assets of Tenant. Any other assignment or subletting of this Lease or leased premises by Tenant shall require the prior written consent of Landlord, which consent shall not be unreasonably withheld.

9.2 It is specifically understood that any assignment by Tenant consented to by Landlord allowed in accordance with this section shall be only for the permitted use and for no other purpose. If Landlord consents to the assignment, or the assignment is permitted in accordance with this section, the permitted transferee shall assume by written instrument all of Tenant's obligations under the Lease. In the event of a permitted assignment, Tenant shall continue to be liable hereunder provided Landlord shall give Tenant written notice

of any default following the default of any assignee or sublessee and Tenant shall have a period of thirty (30) days to cure any such default. Any transfer without Landlord's consent shall not be binding upon Landlord, and shall confer no rights upon any third party. Each such unpermitted transfer shall, without notice or grace period for any kind, constitute a default by Tenant under this Lease. Consent by Landlord to any one transfer shall not constitute a waiver of the requirement for consent to any other transfer. No reference in this Lease to assignee, concessionaires, subtenants or licensees shall be deemed to be consent by Landlord to the occupancy of the Leased Premises by any such assignee, concessionaire, subtenant or licensee.

SECTION 10. SIGN AND DISPLAYS

10.1 Provided appropriate governmental consent shall be obtained, Tenant shall have the right at its own cost and expense to erect and maintain a sign or signs advertising its business and such signs may be displayed and placed either by freestanding or pylon signs. Tenant shall also have the right to attach or paint signs on the building. All signs erected by Tenant shall be in compliance with the applicable laws or within a non-conforming use exception allowed by law, and all such signs may be removed by Tenant at any time during or within thirty (30) days after the expiration of this Lease. Tenant shall not place or permit to be placed on the exterior of the leased premises, on the door, window or roof thereof, in any display window space, or within five (5) feet behind the storefront of the leased premises if visible from the outside, any sign, placard, decoration, lettering, advertising matter of descriptive material without Landlord's written approval. All signs installed by Tenant shall be insured, and shall be maintained by Tenant at all times in first-class condition, operating order and repair. Tenant shall commence to repair any of Tenant's signs which have been damaged within ten (10) days after such damage occurs.

SECTION 11. INSURANCE AND TAXES

11.1 At all times during the term of this Lease, Tenant shall keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. The insurance shall be paid for by Tenant and shall be in amounts not less than 90% of the fair insurable value of the buildings and other improvements. Such policy or policies of insurance shall name both Landlord and Tenant as named insured. In the event Prufrock Restaurants, Inc. or its Corporate affiliate shall not be the tenant occupying the leased premises because of assignment, sublease, or other cause, the policy shall provide that any loss of \$75,000 or less shall be payable solely to Tenant, which sum Tenant shall use for repair and restoration purposes; and any loss over \$75,000 shall be made payable jointly to Landlord and Tenant as their interest may appear and shall be for the purpose of rebuilding and repairing the improvements on the leased premises.

11.2 At all times during the term of this Lease, Tenant shall provide and keep in force during the term of this Lease, liability insurance covering Landlord and Tenant for liability for property damage and personal injury. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. Landlord shall be named as an additional named insured. The insurance provided

shall be a comprehensive general liability insurance with a broad form comprehensive general liability with endorsement applicable to the leased premises and the buildings and improvements located thereon and providing coverage which will pay on behalf of any named or additional named insured all sums which such named and/or additional named insureds shall be liable to pay as damages due to bodily injury (including death) or property damage. The maximum limit of liability of such insurance shall be no less than \$1,000,000 for bodily injury (or death) to any one person, \$1,000,000 for bodily injury (or death) to more than one person and \$500,000 for property damage, or in lieu thereof, \$1,000,000 combined single limit. The public liability insurance shall include, at the same minimum limits of liability as shown above, liquor legal liability coverage.

11.3 Before any alteration, addition, improvements or construction may be undertaken by or on behalf of Tenant, Tenant shall obtain, carry and maintain, at its expense, or Tenant shall require any contractor performing work on the leased premises to obtain, carry and maintain Builders' Risk Insurance in the amount of the replacement cost of the improvements and buildings and Comprehensive General Liability Insurance (including, without limitation, Contractors' Liability Coverage, Contractual Liability Coverage, Completed Operation Coverage, a broad form Property Damage Endorsement and Contractors' Protective Liability Endorsement) providing on an occurrence basis a minimum combined single limit of \$1,000,000.

11.4 Tenant shall furnish Landlord with certificates of all insurance required by this section. Tenant agrees that if it does not keep this insurance in full force and effect, Landlord may notify Tenant of this failure, and if Tenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within ten (10) days after Tenant's receipt of such notice, Landlord may, at its option, taken out and/or pay the premiums on insurance needed to fulfill Tenant's obligation under the provision of this section. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premium paid by Landlord, pursuant to this section, with interest at the rate of ten percent (10%) per annum from date of Landlord's demand until reimbursement by Tenant. Furthermore, the required certificate of insurance shall provide that Landlord will receive at least fifteen (15) days' written notice prior to cancellation or reduction of any such insurance policy.

11.5 Landlord shall cause the leased premises to be separately assessed and taxed by applicable governmental authorities and Tenant shall pay before they become delinquent all real estate, if any, and personal property taxes and special assessments lawfully levied or assessed against the leased premises and contents thereof. For the lease years for which this Lease commences and terminates, the provisions of this Section shall apply and Tenant's liability for its proportionate share of any taxes and assessments for any such year shall be subject to a pro rata adjustment based on the number of days of any such year during the term of this Lease. Tenant shall furnish to Landlord evidence that such taxes have been paid upon Landlord's written request. Tenant may, in good faith, contest any such taxes provided it pays any and all taxes finally adjudicated against the leased premises.

SECTION 12. DAMAGE OF DESTRUCTION BY
FIRE, WAR OR ACTS OF GOD

12.1 If the building upon the leased premises is destroyed or substantially damaged by fire, acts of God, other peril covered by in fire and extended coverage insurance (including earthquake), or war ("war" included enemy aggression, civil riot or commotion, and insurrection) and shall require more than \$100,000 to rebuild or repair such, Tenant may notify Landlord that it desires that the improvements be repaired and/or rebuilt, such notice to be given in writing within thirty (30) days of such destruction or damage. If such notice is given, Tenant shall promptly proceed to carry out and accomplish such repair or rebuilding (taking into consideration the problems, difficulties and delays in obtaining the insurance proceeds), and all insurance proceeds received or arising from such destruction or damage shall be paid to Tenant for use in such repair or rebuilding except as provided in Section 11.1. If such notice is given, the rent shall abate from the time of such destruction or damage until the improvements are rebuilt or repaired and Tenant has reopened for business, but such period of abatement of rental shall not exceed one hundred twenty (120) days. If such notice of desire for repair and/or rebuilding is not given by Tenant within said thirty (30) days, this Lease shall terminate automatically and the rent shall abate from the time of such destruction or damages and the insurance proceeds from the loss of the building shall be paid to Landlord. The insurance proceeds for loss of furniture, equipment and personalty items shall be paid to Tenant.

12.2 If the building may be repaired for less than \$100,000 to substantially the same condition, Tenant shall not have the option to terminate and Tenant shall proceed to repair and rebuild the damage without unreasonable delay, taking into account the problems, difficulties and delays attending the obtaining of the proceeds of the insurance coverage which shall be paid to Tenant, and if during such period the building is found to be partially untenable or inconvenient, the rent payable hereunder during such period shall be adjusted downward to such extent as may be fair and reasonable under the existing circumstances.

SECTION 13. INDEMNIFICATION COVENANTS

13.1 Tenant shall indemnify, defend and hold Landlord, its officers, employees, officials and agents (collectively the "Indemnitees") harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architect's and attorney's fees, which may be imposed upon, incurred by, or asserted against any of the Indemnitees and arising, directly or indirectly, out of or in connection with the use or occupancy of the leased premises by, through or under Tenant, and (without limiting the generality of the foregoing) any of the following:

(a) Any work or thing done in, on or about the leased premises or any part thereof by Tenant or any of its concessionaires, agents, contractors, employees or invitees;

(b) Any use, nonuse, possession, occupation, condition, operation, holdover occupancy, maintenance or management of the leased premises or any part thereof by Tenant;

(c) Any injury or damage to any person or property occurring in, on or about the leased premises or any part thereof caused by Tenant's negligence or misconduct; or

(d) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease with which Tenant, on its part, must comply or perform unless prevented so by the acts of Landlord or force majeure.

In case any action or proceeding is brought against any of the Indemnitees by reason of any of the foregoing, Tenant shall, at Tenant's sole cost and expense, resist or defend such action or proceeding.

Except for the negligence of Tenant, its agents or employees, Tenant shall not be liable for any damage or injury to any property or persons which might occur on property owned or leased by Landlord adjacent to the leased premises. The Landlord shall indemnify, defend and hold harmless Tenant, its officers, employees and agents from any claim, liability or damages (including reasonable attorney's fees and expense) incurred by Tenant which result from any work or thing done in, on or about the Landlord's adjacent property.

SECTION 14. WAIVER OF SUBROGATION

14.1 Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto through subrogation or otherwise) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees, for any loss or damage that may occur to the leased premises or any improvements thereto or any personal property therein, by reason of fire, the elements or any other cause, which are insured against by the terms of a standard fire and extended coverage insurance policy, regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees and regardless of the amount of the deductible. This release shall not be limited to the liability of the parties to each other. It shall also apply to any liability to any person claiming through or under the parties pursuant to a right of subrogation or otherwise. This release shall apply even if the loss or damage shall have been caused by the fault or negligence of Tenant or Landlord or any person for whom Tenant or Landlord may be responsible. Each party shall cause its policies with its insurers to provide for the waiver of subrogation as set forth herein.

SECTION 15. LANDLORD'S RIGHT TO INSPECT

15.1 Landlord expressly reserves the right to enter the premises at reasonable times during business hours and in a manner so as not to disturb Tenant's business to inspect or examine the improvements.

SECTION 16. SUBORDINATION

16.1 This Lease shall be subject and subordinate at all times to the lien of any Deed of Trust or mortgages now on the premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any Deed of Trust or mortgage or mortgages which at any time may hereafter be made a lien upon the premises by Landlord provided, however, that such subjection

and subordination is upon the express condition that this Lease shall be recognized by the mortgagee and that all the rights of the Tenant shall remain in full force and effect during the full term of this Lease on condition that the Tenant shall not be in default pursuant to the terms of this Lease and further provided that in the event of foreclosure or any enforcement of any such mortgage, the right of the Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such instruments shall carry the conditions and provisions set forth above.

16.2 Tenant may, at any time and from time to time, encumber the leasehold interest, by deed of trust, mortgage or other security instrument, without obtaining the consent of Landlord, but no such encumbrance shall constitute a lien on the fee-title of Landlord, and the indebtedness by the encumbrance shall at all time be and remain inferior and subordinate to all of the conditions, covenants and obligations of this Lease and to all the rights of Landlord under this Lease.

SECTION 17. DEFAULT AND BANKRUPTCY

17.1 In the event Tenant shall fail to make any rental or other monetary payment due hereunder within seven (7) days after receipt of written notice that the same shall be due or if the Tenant shall breach or fail to perform any other agreement herein and shall fail to commence to cure such breach or to commence to perform such agreement within thirty (30) days after written notice from the Landlord, Landlord in either such event shall have the option to:

(i) to maintain this Lease in full force and effect, whereupon Landlord shall have the right to sue for all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as the same come due; or

(ii) to terminate this Lease and repossess and retain the premises and the permanent improvements, whereupon Landlord shall have the right to recover from Tenant the present value of all Minimum Rental and other amounts to accrue under this Lease, discounted at the rate of ten percent (10%) per annum, less the cash market value of this Lease for the unexpired portion of the term; or

(iii) to terminate Tenant's right to possession of the premises without terminating this Lease, whereupon Landlord shall have the right (but not the obligation) to repossess the premises and the permanent improvements, to attempt to Lease them to another tenant, and to recover from Tenant all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as same come due and as reduced by the rental, if any, received by Landlord for the pertinent Lease period from the other tenant, if any, after recovery of all reasonable expenses incurred by Landlord in effecting any reletting of the premises; provided, however, that if Landlord elects or is deemed to have elected to proceed under this subparagraph (iii), then Landlord may at any time thereafter elect to terminate this Lease pursuant to subparagraph (ii).

The remedies provided in this section shall not be exclusive and in addition thereto the Landlord may pursue such other remedies as are provided by law in the event of

any breach or default by Tenant. Landlord agrees to use its reasonable efforts to mitigate its damages.

17.2 In the event Tenant shall be adjudicated a bankrupt or insolvent or take the benefit of any reorganization or composition proceeding or insolvency law or make a voluntary assignment for the benefit of creditors or if Tenant's leasehold interest under this Lease shall be sold under any execution or process of law or if a receiver shall be appointed for Tenant and is not discharged in ninety (90) days and if after thirty (30) days additional notice to Tenant that Landlord desires to terminate this Lease such condition is not cured or remedied, then and thereafter Landlord shall have the right and option to terminate this Lease.

17.3 If Landlord should default or fail to perform any covenant, agreement, undertaking or obligation imposed upon it in this Lease, and such default shall continue for a period of thirty (30) days after service of written notice thereof upon Landlord by Tenant, Tenant may, at its option, upon ten (10) additional days notice served upon Landlord, perform such covenant, agreement, undertaking or obligation for and on behalf of Landlord, and recover damages against Landlord for breach thereon. In addition to the above, Tenant shall have and possess and be entitled to assert all rights and remedies for such default as may then be afforded by applicable statutory or common law to enforce the lease terms, seek damages or both.

SECTION 18. CONDEMNATION

18.1 In the event the leased premises or any part thereof shall be condemned (which shall include any taking of public or quasi-public use under any statute, or by right of eminent domain, or by sale under threat of eminent domain), the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer on this Lease shall be as follows:

(a) All damages (or settlement in lieu thereof) awarded for any such taking under the power of eminent domain, whether for the whole or part of the leased premises shall be prorated between the Landlord and the Tenant in the following manner. That portion of the award which is reasonably attributable to the land shall belong to Landlord. Landlord shall not be entitled to any award made to Tenant for or reasonably attributable to loss of or damage to Tenant's trade fixtures, leasehold improvements made by Tenant, and removal of personal property or for damages for cessation and interruption of Tenant's business and leasehold estate. That portion of the award which is reasonably attributable to the building and permanent improvements shall be divided between Landlord and Tenant to the effect that Tenant shall be entitled to the unamortized value thereof based upon a twenty (20) year straight line basis from the commencement date.

(b) If the entirety of the leased premises shall be condemned, or if a portion of the leased premises shall be condemned which shall materially affect Tenant's operations in its reasonable judgment, this Lease shall terminate, provided, however, that such termination shall be without prejudice to the respective interests of Landlord and Tenant in the condemnation award or proceeds in lieu thereof as set forth herein.

SECTION 19. ACCESS EASEMENT AND USE OF PROPERTY

19.1 Landlord hereby grants to Tenant during the term of this Lease a non-exclusive license to provide automobile access to Beltline Road over Landlord's adjacent property as shown on Exhibit "A" for the benefit of the Leased Premises. Tenant does hereby grant to Landlord and its future tenant or successor and assign a non-exclusive license to use, without charge, a portion of the Leased Premises as shown on Exhibit "A" to provide vehicular access from Belt Line Road for the benefit of the Landlord's adjacent property. The nonexclusive licenses granted herein to Tenant and Landlord shall be for the purpose of foot and vehicular ingress and egress. Landlord and Tenant shall not erect any curb or barrier between the Leased Premises and the Landlord's property which would interfere with the traffic, and shall cooperate with each other in providing reciprocal access between them. Tenant, at all times, shall maintain in good condition and repair the hard surface paving constructed on its tract and insure that ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld. Landlord agrees that if it shall lease its adjacent property to another tenant, it shall require such tenant to maintain in good condition and repair the hard surface paving constructed on its adjacent tract and insure that the ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld. Prior to the leasing of the adjacent tract by Landlord, Tenant, at its sole cost, shall have the right to make the necessary improvements to the access area to allow vehicular ingress and egress to Belt Line Road across Landlord's adjacent property.

19.2 Landlord agrees that during the term of this Lease, or until any change in use pursuant to this Lease, or until termination of this Lease, whichever shall first occur, Landlord shall not lease, sublease or otherwise operate or contract, by conveyance or otherwise, on the adjacent premises owned by Landlord a food service establishment featuring or specializing in the sale, at retail, of homestyle cooking featuring chicken-fried type entrees and fresh vegetables, cobblers, pies and fresh-baked breads. The term "featuring or specializing," for the purpose of this provision, shall mean that all such items as aforescribed, shall be identified as major menu items in terms of sale volumes or public identification. Examples of prohibitive restaurants are Po Folks Restaurant, Good Eats Restaurant, Country Kitchen Restaurant and Old Country Buffet Restaurant. All other types of restaurants not featuring or specializing in the aforementioned foods are specifically authorized. Landlord shall include in any lease of the adjacent property a prohibition upon the proposed tenant from operating an establishment that conflicts with the provisions of this paragraph for the benefit and enforcement of Tenant herein. Additionally, Landlord shall require in the lease of the adjacent property that the lessee will furnish to the Landlord sufficient records of revenues generated from the lessee's operations in order to verify that the restaurant is being operated in accordance with the foregoing prohibition. This information will be furnished to Tenant upon Tenant's written request. Tenant's right to request information from the lessee shall only be authorized if the lessee operates a food service establishment featuring or specializing home-style cooking of the items provided for hereinabove.

In no event shall the Landlord's property adjacent to the leased premises be used or occupied by any party in which over forty percent (40%) of its sales shall be of alcoholic beverages.

19.3 Landlord has advised and furnished Tenant a copy of that certain Mutual Access and Easement Agreement dated December 19, 1986, by and between Daryl N. Snadon and the Town of Addison, Texas ("Mutual Access and Easement Agreement"). Tenant does hereby agree to abide by the terms and conditions set forth in such Mutual Access and Easement Agreement, and furthermore, Tenant, during the term of this Lease, agrees to assume and perform each of the conditions and obligations imposed upon Landlord by the Mutual Access and Easement Agreement. Landlord warrants and covenants that Tenant shall be entitled to the benefits of the Mutual Access and Easement Agreement as granted to Landlord therein during the term of this Lease.

SECTION 20. MECHANICS' AND MATERIALMEN'S LIENS

20.1 Tenant covenants and agrees with Landlord that from and after the date of execution hereof, Tenant will keep the leased premises free and clear of any and all mechanics' and/or materialmen's liens on account of any construction, repair, alteration or improvements which Tenant shall by virtue of the conduct of alleged conduct of Tenant, and in the event that Tenant will cause the same to be removed as against the leased premises, Tenant will cause the same to be removed as against the leased premises by posting of the necessary bond or indemnification within thirty (30) days from and after such time as said lien shall have attached to, or be asserted upon or against the leased premises. Tenant shall indemnify and hold harmless the Landlord from any and all losses or expenses arising from the discharge of any such lien that shall attach to the leased premises.

SECTION 21. ENVIRONMENTAL MATTERS

21.1 Landlord and Tenant agree to the following with respect to environmental matters.

(a) Landlord's Representations and Warranties. Landlord represents and warrants to Tenant that, to Landlord's knowledge, which shall be limited to the knowledge of the current Mayor, City Councilman and City Manager after due inquiry, (i) no hazardous substance, including, without limitation, asbestos-containing materials and electrical transformers or ballasts containing PCBs, are present, or were installed, exposed, released or discharged in, on or under the leased premises at any time during or prior to Landlord's ownership thereof, except for the asbestos materials used in the construction of the buildings situated on the premises which has been subsequently removed, (ii) no storage tanks for gasoline or any other substance are or were located on the leased premises at any time during or prior to Landlord's ownership thereof, except as noted on the materials previously delivered to Tenant which Tenant acknowledges receipt and is identified by undated letter from Cheryl Nichols to Tom Rodgers with attachments, and (iii) the leased premises and the improvements have been used and operated in compliance with all applicable local, state and federal laws, ordinances, rules, regulations and orders, and Landlord has all permits and authorizations required for the use and operation of the leased premises.

(b) Covenants. Tenant shall at all times comply with applicable local, state and federal laws, ordinances and regulations relating to Hazardous Substances. Tenant shall at its own expense maintain in effect any permits, licenses

or other governmental approvals, if any, required for Tenant's use of the premises. Tenant shall make all disclosures required of Tenant by any such laws, ordinances and regulations, and shall comply with all orders, with respect to Tenant's use of the premises, issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the Tenant's activities on the premises into compliance with all laws, rules, regulations and ordinances relating to Hazardous Substances and affecting the premises. Landlord shall make all disclosures required of Landlord by any such laws, ordinances and regulations, and shall comply with all orders issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the leased premises into compliance with all laws, rules, regulations and ordinances relating to Hazardous Substances and affecting the leased premises.

(c) Notices. If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any Hazardous Substance has been released or has otherwise come to be located on or beneath the leased premises, such party shall, immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of a Hazardous Substance on or beneath the premises, shall immediately notify the other party in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substance laws, (ii) any claim made or threatened by any person against Landlord, Tenant, the premises and improvements arising out of or resulting from any Hazardous Substances, and (iii) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Substance.

(d) Indemnity. Landlord shall indemnify, defend (by counsel acceptable to Tenant), protect, and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises or the improvements, or any discharge or release in or from the premises or the improvements of any Hazardous Substance, caused by Landlord or existed at the time of the Lease, except to the extent that any such presence, discharge, or release is caused by Tenant's activities on the premises, or (ii) Landlord's failure to comply with any Hazardous Substance law. Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold harmless Landlord, and each of Landlord's partners, public officials, directors, officers, employees, agents attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises, the improvements or any discharge or release in or from the premises, the improvements of any Hazardous Substance but only to the extent that any such presence, discharge, or release is caused by Tenant's activities on the

premises, or (ii) Tenant's failure to comply with any Hazardous Substance law, to the extent that compliance is required on account of Tenant's activities on the premises and not to the extent that compliance is required solely because Tenant, as the occupant of the premises, is held accountable for Hazardous Substances on, in, under, or about the leased premises, or released from the leased premises which are not caused by or released on account of Tenant's activities. The indemnity obligation created hereunder shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of the premises and improvements. The obligations of the parties hereunder shall survive the expiration or earlier termination of this Lease.

(e) Limited Indemnity. With regards to any discharge or release in or on the premises or the improvements of any Hazardous Substance by any third party which results in the death of or injury to any person or damage to any property whatsoever, Landlord and Tenant agree as follows:

(i) Landlord shall indemnify, defend, protect and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, costs or expenses (including attorneys' fees, consultants' fees and expert fees) for any and all costs for cleanup, detoxification or decontamination or other remedial action on the premises.

(ii) If the building upon the leased premises is contaminated and requires Tenant to cease its business therein for a period of more than six months, Tenant shall have the option to terminate this Lease and require the Landlord to reimburse if of its unamortized cost of the building based upon a 20-year straight line basis from the Commencement Date to the date of the incident; and Landlord shall receive all insurance proceeds, if any, relating to the building.

(iii) During the time Tenant's operations have ceased upon the leased premises due to the hazardous waste contamination, the rent shall be abated and the lease term hereof shall be extended for the number of days during which Tenant's operations have ceased.

(iv) Except for each party's respective negligence, Landlord and Tenant shall not be liable to each other for any additional costs and expenses or losses other than set forth above in the foregoing subparagraphs.

(v) Landlord shall use due diligence to remove or cleanup the hazardous waste.

21.2 Hazardous Substances. As used in this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302)

and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law.

SECTION 22. MISCELLANEOUS

22.1 Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, so long as it is not in default of the Lease, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease and any extension or renewal thereof.

22.2 This Lease and the covenants, agreements, restrictions and conditions herein contained shall bind, and the benefits and advantages hereof shall inure to the respective heirs, legal representatives, successors and assigns of the parties hereto. This Lease shall be governed by the laws of the State in which the leased premises are located.

22.3 Whenever used the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. This instrument may be executed in counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument.

22.4 Any notice required or permitted to be served under this Lease shall be served by delivery in person or by placing the same in the United States registered or certified mail, postage and costs prepaid, addressed to the other party at the address set forth below or at such other address as such party may designate by notice to the other in writing:

Landlord

Town of Addison
Attn: City Manager
P. O. Box 144
Addison, TX 75001

Tenant

Prufrock Restaurants, Inc.
Attn: President
8115 Preston Road, LB 7
Dallas, TX 75225

22.5 Each party agrees that from time to time, upon not less than ten (10) days prior written notice by the other party, it will deliver to the other party a statement in writing certifying that:

(a) The Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect).

(b) The dates to which rent and other charges have been paid.

(c) The other party is not in default under any provisions of the Lease or if in default the nature thereof in default.

(d) Any such other Lease information related to the Leased Premises as may reasonably be requested.

22.6 Each party agrees that it will, upon request of the other, execute and deliver a Memorandum of Lease in recordable form for the purpose of giving record notice of this Lease.

22.7 Landlord and Tenant acknowledges and represents to each other that Frank N. Bullock, Inc. (FNB) and United Commercial Realty (UCR) have acted as broker in connection with this Lease, and that each party has had no dealings with any broker or agent other than FNB and UCR. Landlord has made separate agreements with UCR and FNB for payment of brokers' fees and Tenant shall have no liability to UCR or FNB for any brokerage fee. In the separate agreement between Landlord and FNB, Landlord has agreed to pay a commission of \$26,374.80, which amount shall be payable as provided in the separate agreement.

22.9 The execution by Tenant of this Lease and the delivery of the same shall constitute an offer, which shall automatically expire unless counterparts of the Lease duly executed by Landlord have been delivered to Tenant on or before ten (10) days following Tenant's execution hereof.

22.10 For purposes of this Agreement, the "date of this Agreement" shall be deemed to be the latter of the dates of execution of this Agreement by Landlord and Tenant, such dates being inserted opposite the signatures of Landlord and Tenant. Such latter date shall be inserted in the preamble on page 1 of this Agreement.

22.11 If (a) Tenant fails to make any payment currently due under this Lease after notice to Tenant and Tenant's failure to cure after five (5) business days when due or (b) Landlord incurs any cost or expense as a result of Tenant's default under the Lease, then Tenant shall pay, upon demand, interest from the date such payment was due or from the date Landlord incurred such cost or expenses relating to the performance of any such obligation or Tenant's default, as the case may be, plus the payment due under (a), or the amount of such reasonable cost and expenses incurred under (b). Failure to insist upon payment on any one or more instances shall not constitute a waiver, and it is understood that is an addition to any other express charges provided for in this Lease. The term "Interest" shall mean interest at the rate of ten percent (10%) per annum.

22.12 If any action or proceeding is commenced in which either party intervenes or is made a party by reason of being a party under this Lease, or if either party shall deem it necessary to engage an attorney to institute any suit against the other in connection with the enforcement of and its rights under the Lease, then the prevailing party shall be entitled to reimbursement from the other party for its reasonable expenses incurred as a result thereof, including without limitation, court costs and reasonable attorneys' fees.

LANDLORD:

~~TOWN OF ADDISON~~

Date: June 13, 1991

By: Ra. Williams

TENANT:

PRUFROCK RESTAURANTS, INC.

Date: June 12, 1991

By: Theodore J. P. [Signature]

#R13

**EXHIBIT 2
TO OPTION CONTRACT**

LEASE AGREEMENT

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

This Lease Agreement (hereinafter referred to as "Lease" or "Agreement") made and entered into on this _____ day of _____, _____ (the "Effective Date", being the later of the dates on which this Agreement is signed by Landlord and Tenant) by and between the Town of Addison, Texas, a Texas home-rule municipality ("Landlord") and Amar Unlimited, Inc., a Texas corporation ("Tenant").

ARTICLE ONE: BASIC TERMS

This Article One contains the Basic Terms of this Lease ("Lease") between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. **Lease Commencement Date:** January 1, 2013.

Section 1.02. **Landlord:** Town of Addison, Texas

Address of Landlord: 5300 Belt Line Road, Dallas, Texas 75240-7606

Section 1.03. **Tenant:** Amar Unlimited, Inc., a Texas corporation

Address of Tenant: 4460 Belt Line Road, Addison, TX 75001

Section 1.04. **Leased Premises:** The Leased Premises means the tract of land which is described as Tract I on Exhibit "A" attached hereto and incorporated herein by reference (and generally located at 4460 Belt Line Road in the Town of Addison, Dallas County, Texas 75001), together with the building (the "Building") and all other structures, fixtures, and other improvements which are now located or which may hereafter be located on the tract of land.

Section 1.05. **Lease Term:** The Lease Term shall commence on the Lease Commencement Date and shall expire on December 31, 2017 (for a total lease period of sixty (60) months).

Section 1.06. **Lease Year:** A Lease Year is each twelve (12) month period during the Lease Term, the first such Lease Year beginning on the Lease Commencement Date and ending

on the last day of the twelfth month after the Lease Commencement Date (such last day being December 31, 2013).

Section 1.07. **Permitted Uses:** (See Article Five): A restaurant with alcoholic beverage service (as permitted by law).

Section 1.08. **Brokers:** (See Section 14.01)

Landlord's Broker: (none).

Tenant's Broker: John T. Evans Co.

Section 1.09. **Commission Payable to Tenant's Broker:** (See Section 14.01).

Section 1.10. **Security Deposit:** (See Section 3.02) an amount equal to Base Rent for one month (\$11,666.67), payable in full upon execution of this Lease.

Section 1.11. **Rent:**

A. **Base Rent.** The term "Base Rent" as used hereunder shall mean an annual charge equal to One Hundred Forty Thousand and No/100 Dollars (\$140,000.00). The Base Rent will be paid in advance in monthly installments, determined by dividing the annual rental amount set forth hereinabove by twelve (12) (so that each monthly payment shall equal Eleven Thousand Six Hundred Sixty Six and 67/100 Dollars (\$11,666.67)).

B. **Percentage Rent.** In addition to the Base Rent specified in Section 1.10.A., Tenant shall pay to Landlord, for each Lease Year during the Lease Term, percentage rental in an amount determined by multiplying (i) six percent (6%), times (ii) the total Gross Sales made in or from the Leased Premises which are in excess of One Million Eight Hundred Fifty One Thousand Eight Hundred Thirty Two and No/100 Dollars (\$1,851,832.00) during the applicable Lease Year.

Section 1.12. **Tenant Improvements:** (See Section 2.02).

Section 1.13. **Old Lease:** That Lease of the Leased Premises between the Town of Addison, Texas, as Landlord, and Prufrock Restaurants, Inc. ("Prufrock"), as Tenant, entered into on June 13, 1991.

Section 1.14. **Option Contract.** The Option Contract between the Town of Addison, Texas and Amar Unlimited, Inc. with an effective date of December 14, 2002 (the "**Option Contract Date**"), in which the Town of Addison, Texas granted to Amar Unlimited, Inc., for the consideration and according the terms and conditions stated therein, a right and option to enter into this Lease.

ARTICLE TWO: LEASE TERM; IMPROVEMENTS

Section 2.01. **Lease For Lease Term.**

A. Landlord leases the Leased Premises to Tenant and Tenant leases the Leased Premises from Landlord for the Lease Term. The Lease Term is for the period stated in Section

1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless sooner terminated as set forth herein. Notwithstanding the foregoing or any other provision of this Agreement, in the event Tenant is in default under the Old Lease beyond any applicable cure period at any time during the six month period prior to the Lease Commencement Date, Landlord shall have the right to immediately terminate this Lease and any option or other right granted Tenant by this Lease, and upon such termination all rights and duties of the Landlord and Tenant hereunder shall immediately cease.

B. Tenant shall vacate the Leased Premises upon the expiration or termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Leased Premises or occupancy of the Leased Premises after this Lease expires or terminates, **AND TENANT WILL INDEMNIFY AND DEFEND LANDLORD AGAINST ANY AND ALL CLAIMS ARISING FROM TENANT'S FAILURE TO TIMELY VACATE THE PREMISES.** If Tenant holds over or continues to occupy the Leased Premises after the expiration or termination of this Lease or of Tenant's right of possession, Tenant will: (a) do so as a tenant-at-will; and (b) pay Landlord (for the entire holdover or period of occupancy) 200% of the Base Rent that otherwise would have accrued during the holdover or occupancy. No holding over by Tenant or payment to Landlord after the expiration or termination of this Lease will renew or extend this Lease, prevent Landlord from recovering immediate possession of the Leased Premises by summary proceedings or otherwise, unless Landlord sends written notice to Tenant that Landlord elects to extend this Lease.

Section 2.02. **Construction of Improvements; Acceptance of Leased Premises.**

A. Landlord has no obligation to refurbish the Leased Premises, construct any improvements to the Leased Premises, or make any alterations to the Leased Premises, and Tenant accepts the Leased Premises **AS IS, WHERE IS,** and **WITH ALL FAULTS.** Tenant waives any implied warranties of suitability, habitability, and fitness for a particular purpose, and waives all claims based on any defect in the Leased Premises that could have been discovered by Tenant's reasonable inspection. Tenant shall, prior to making any improvements to the Leased Premises, deliver to Landlord (for Landlord's review and consideration of approval) plans and specifications for proposed Tenant improvements to the Leased Premises and Tenant's proposed signage. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Leased Premises, regardless of whether Landlord's consent to such work is required.

B. Tenant shall not create any openings in the roof or exterior walls of the Building, or make any alterations, modifications, changes, additions or improvements to the Building or to the Leased Premises, without the prior written consent of Landlord. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord. Before beginning any alteration, addition, or improvement to the Leased Premises or any part thereof, and as a condition to obtaining Landlord's consent, Tenant must furnish Landlord with: (i) plans and specifications acceptable to Landlord; (ii) names and addresses of contractors reasonably acceptable to Landlord; (iii) copies of contracts (as may be requested by Landlord); (iv) necessary permits and approvals; (v) evidence of contractor's and subcontractor's insurance (to include coverage against such risks, in such amounts and with such companies as Landlord may require); and (v) if required by Landlord, payment and performance bonds, letters of credit, or other security, all in form and amount satisfactory to Landlord.

C. Tenant shall construct and complete improvements to the Leased Premises (the “Initial Tenant Improvements”) with a construction value (design (architecture, engineering) costs plus construction costs (together, “Construction Value”)) equal to or in excess of \$75,000.00. Such Initial Tenant Improvements shall be constructed and completed in accordance with subsection C.1 of this Section below; provided, however, that Tenant may, as set forth below in and in accordance with subsection C.2 of this Section, satisfy (to the extent of the Construction Value of the Pre-Lease Period Improvements (as hereinafter defined)) all or part of the obligation to construct and complete the Initial Tenant Improvements if Tenant has constructed improvements to the Leased Premises during the 36 month period preceding the Lease Commencement Date (the “Pre-Lease Period”).

1. On the Lease Commencement Date, Tenant shall deliver to Landlord plans and specifications for the proposed Initial Tenant Improvements. Prior to any construction of any Initial Tenant Improvements, Tenant shall submit plans and specifications for the Initial Tenant Improvements to Landlord for Landlord’s review and consideration of approval. For purposes of this Lease, plans and specifications shall be deemed approved by Landlord if such plans and specifications are approved by the Town of Addison City Manager. If Tenant shall fail to deliver to Landlord bona fide plans and specifications for the Initial Tenant Improvements on the Lease Commencement Date, Landlord shall have the right to immediately terminate this Lease. If Landlord and Tenant have not reached final agreement on proposed plans and specifications for the Initial Tenant Improvements before March 1, 2013, then either Landlord or Tenant shall have the right to immediately terminate this Lease (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease). If Landlord and Tenant reach mutual agreement as to plans and specifications for the Initial Tenant Improvements in a timely fashion, then Tenant will thereafter promptly commence construction of the Initial Tenant Improvements and proceed diligently to final completion of the Initial Tenant Improvements under the following terms and conditions:
 - (a) Upon the final completion of the Initial Tenant Improvements, Tenant shall present evidence to Landlord that the Construction Value of the Initial Tenant Improvements is not less than \$75,000.00. Such evidence shall include true and correct copies of all invoices, receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof, the amount actually paid and payment for such design and construction work, and such other information as Landlord may request. For purposes of this Lease, the Initial Tenant Improvements shall be deemed completed upon the issuance by the Town of Addison of a final (non-temporary) certificate of occupancy and/or such other documents or approvals required or provided by the Town of Addison in connection with the construction and completion of the Initial Tenant Improvements;
 - (b) In the event that the Initial Tenant Improvements are not commenced and/or completed in accordance herewith, or if such evidence regarding the Construction Value of the completed Initial Tenant Improvements has not been presented as set forth herein, Landlord shall have the right to

immediately terminate this Agreement (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease); and

- (c) All work done in connection with the Initial Tenant Improvements shall be in accordance with paragraph D. of this Section 2.02 and other applicable provisions of this Lease.

2. During the Pre-Lease Period, Tenant may construct and complete improvements to the Leased Premises (“Pre-Lease Period Improvements”). Such Pre-Lease Period Improvements may satisfy, to the extent of the Construction Value of such Pre-Lease Improvements, Tenant’s obligation to construct and complete the Initial Tenant Improvements provided:

- (a) Tenant, prior to construction of any Pre-Lease Period Improvements, submitted plans and specifications for the Pre-Lease Improvements to Landlord for Landlord’s review and consideration of approval, and such plans and specifications were approved by the Town of Addison City Manager;
- (b) Tenant shall certify and present to Landlord, on the Lease Commencement Date, evidence of the Construction Value of the Pre-Lease Period Improvements. Such evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof, the amount actually paid and payment for such design and construction work, and such other information as Landlord may request;
- (c) Tenant shall present evidence to Landlord, on the Lease Commencement Date, that Tenant received from the Town of Addison a final (non-temporary) certificate of occupancy and/or such other document or approval required or provided by the Town of Addison in connection with the construction and completion of the Pre-Lease Period Improvements; and
- (d) All work done in connection with the Pre-Lease Period Improvements shall have been in accordance with subsection D. of this Section 2.02 and other applicable provisions of this Lease.

D. Any and all Tenant improvements or work at the Leased Premises (including, without limitation, the Initial Tenant Improvements) shall be made and/or performed by Tenant under the following terms and conditions:

- 1. Any labor performed at the Leased Premises and all materials furnished to the Leased Premises shall be at Tenant's own cost, expense, and risk. Labor and materials used in the installation of Tenant's furniture and fixtures, and in any other work on the Leased Premises performed by Tenant, will be subject to Landlord's prior written approval. Any such approval of Tenant's laborers shall constitute a license authorizing Tenant to permit laborers to enter upon the Leased Premises; provided, however, that the continued effectiveness of such license is

conditioned upon Tenant's aforesaid laborers not unreasonably interfering with the operations or use of any other of Landlord's property. Accordingly, if at any time such entry of Tenant's laborers shall cause any such unreasonable interference, this license may be withdrawn by Landlord upon forty-eight (48) hours' written notice to Tenant, upon expiration of which Tenant shall have caused all of Tenant's laborers (as to whom Landlord shall have given such notice) to have been removed from the Leased Premises. Tenant agrees to indemnify and hold Landlord harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from any act or omission of Tenant or Tenant's agents, officers, employees, contractors, subcontractors, laborers, materialmen, or invitees, or arising from any bodily injury or property damage occurring or alleged to have occurred incident to Tenant's work at the Leased Premises. Tenant shall have no authority to place and will not permit any mechanic's or other lien upon the Leased Premises or any interest therein or part thereof nor in any way to bind Landlord; and any attempt to do so shall be void and of no effect. Landlord expressly disclaims liability for the cost of labor performed or materials furnished by Tenant. If, because of any actual or alleged act or omission of Tenant, any lien, affidavit, charge, or order for the payment of money shall be filed against Landlord, the Leased Premises, or any portion thereof or interest therein, whether or not such lien, affidavit, charge, or order is valid or enforceable, Tenant shall, at Tenant's own cost and expense, cause same to be immediately discharged of record by payment, bonding, or otherwise, no later than thirty (30) days after notice to Tenant of the filing thereof, but in all events, prior to the foreclosure or attempted foreclosure thereof. All of Tenant's improvements or other work at or on the Leased Premises shall be performed in a first class, workmanlike manner, reasonably satisfactory to Landlord's agent and in accordance with applicable building codes, regulations, and all other legal requirements.

2. Tenant agrees to pursue the construction of any Tenant improvements or work with due diligence in an effort to complete the same as soon as reasonably possible.
3. In connection with any Tenant improvements, Tenant shall take out and maintain (or cause the contractor under its construction contract(s) to take out and maintain) commercial general liability insurance in a minimum amount of \$1,000,000.00 combined single limit. Said liability insurance shall name Landlord as an additional insured with Tenant (and shall contain no cross-liability exclusion) and shall be non-cancelable with respect to Landlord except upon thirty (30) days' notice to Landlord (given in the same manner as provided in this Lease). Tenant shall also take out and maintain (or cause the contractor under its construction contract(s) to take out and maintain) all builder's risk insurance to the full insurable value of improvements constructed and materials stored at the Leased Premises. Said builder's risk insurance shall name Landlord an additional insured as its interest may appear and shall be non-cancelable with respect to Landlord. Certificates of all such insurance shall be delivered by Tenant to Landlord within five (5) days following Tenant's entering into any such construction contract(s) (but in all events prior to Tenant or Tenant's general contractor commencing construction).

4. Upon completion of any improvements or work by Tenant, performed by or on behalf of Tenant at the Leased Premises, Tenant will deliver to Landlord a general contractor's affidavit and lien waiver in form acceptable to Landlord, executed by the general contractor performing such work stating that construction has been completed in accordance with the approved plans and specifications and that all subcontractors, laborers, material suppliers engaged in or supplying materials for such work have been paid in full.
5. All improvements constructed by Tenant at the Leased Premises (excepting only removable trade fixtures, furniture, and equipment installed by Tenant) shall, immediately upon such construction, become and remain the property of Landlord; and Tenant shall have no right, title, or interest (including lien interest) therein, except only as Tenant under the provisions of the Lease. The aforesaid improvements, if constructed by Tenant, are not intended as any nature of rent or compensation to Landlord.
6. Landlord assumes no responsibility with respect to any plans and specifications for construction work to be performed by Tenant or on behalf of Tenant, the selection of general contractors and subcontractors, and/or the performance of any construction work for which Tenant is responsible under the terms of this Lease. By accepting, consenting to, or approving any item, person, or matter which is delivered or presented to Landlord or which is required to be accepted, consented to, or approved by Landlord pursuant to this Lease, including, without limitation, the approval of any plans and specifications for Tenant improvements or other work and/or the approval of any general contractors or subcontractors, Landlord shall not be deemed to have warranted or represented the sufficiency, effectiveness, or any other characteristics of the same, or of any term, provision, or condition thereof, and such acceptance, consent to, or approval thereof shall not be or constitute any warranty or representation of any kind or nature with respect thereto by Landlord.

ARTICLE THREE: RENT; BOOKS AND RECORDS; SECURITY DEPOSIT; INTEREST; TAXES

Section 3.01. Time and Manner of Payment.

A. Base Rent. Tenant shall pay Base Rent for the first month (January, 2013) upon Tenant's execution of this Lease. After the Lease Commencement Date (and beginning February 1, 2013), Tenant shall pay Base Rent on the first day of each calendar month during the Lease Term. All payments of Base Rent hereunder shall be made in advance, without offset, deduction or prior demand. The Base Rent and all other sums due hereunder shall be payable at Landlord's address set forth in Section 1.02 at such other place as Landlord may designate in writing.

B. Percentage Rent. In addition to the Base Rent, Tenant shall pay to Landlord, for each Lease Year, Percentage Rent as described in Section 1.11, above, in accordance with the following:

1. Within thirty (30) days after the end of a Lease Year, Tenant shall furnish to Landlord a report certified under oath to be true and correct by an officer of Tenant showing the total Gross Sales made in or from the Leased Premises during the applicable Lease Year, and if such Gross Sales disclosed thereby are sufficient to require a payment of Percentage Rent, such payment shall accompany the report.
2. The term "Gross Sales" as used herein shall mean the aggregate amount of all sales of food, beverages and any and all other products and services at or in connection with the Leased Premises, whether for cash or credit sales, including, without limitation, the entire amount of the sales price, whether cash or otherwise, of all sales of food, beverages, merchandise (including gift and merchandise certificates); services and other receipts whatsoever of all business conducted in or from the Leased Premises, including mail or telephone orders received or filled at the Leased Premises; deposits not refunded to purchasers; orders taken, although said orders may be filled elsewhere; sales by any authorized subtenant, concessionaire or licensee or otherwise in or on or in connection with Tenant's business at the Leased Premises. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant receives payment from its customer. Gross Sales shall not include, however, *bona fide* credits, and any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, nor shall it include the exchange of merchandise between the stores of Tenant, if any such exchanges are made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has therefore been made in or from the Leased Premises and/or for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the Leased Premises, nor the amount of returns to shippers or manufacturers, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant, nor sales of Tenant's trade fixtures, furniture, and equipment.
3. Each Gross Sales report shall be sworn to and certified to be true and correct by an officer of Tenant. In the event Landlord is not satisfied with any report of Gross Sales submitted by Tenant, Landlord shall have the right to have an independent certified public accountant make a special audit of all books and records of Tenant (which Tenant shall cause, for purposes of such audit, to be located in Dallas County, Texas) pertaining to sales made in and from the Leased Premises; provided, however, said audit shall be limited to one time with respect to each Lease Year and must be conducted within two (2) years after the end of a Lease Year. Tenant shall have the right to submit any additional information as it may believe pertinent to any audit, and Tenant shall report to Landlord such other reasonably related information relating to Tenant as Landlord may reasonably consider useful and reasonably necessary. Tenant shall cooperate by all reasonable means in order to facilitate a timely and accurate completion of such audit. If such audit discloses that Tenant understated Gross Sales by more than two percent (2%) over the amount submitted by Tenant, Tenant shall pay the costs for such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord

shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

4. In its Gross Sales report to Landlord, Tenant shall separate and distinguish between sales of food and sales of alcoholic beverages (if sales of alcoholic beverages are permitted on the Leased Premises).

C. Books and Records; Landlord Inquiries. Tenant agrees to maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to Gross Sales, kept and maintained in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying and examination by Landlord or by properly designated employees or agents of Landlord. Landlord may require the keeping of additional records or accounts relating to Gross Sales which are customary for the businesses conducted on the Leased Premises and which are reasonably necessary for purposes of identifying, accounting for, and reporting Gross Sales.

Landlord may, at any time, make inquiries pertaining to the operation of the Leased Premises and the improvements thereon, and Tenant shall respond to such inquiries in a prompt and timely manner.

Section 3.02. Security Deposit. Upon the execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount of \$11,666.67 (being an amount equal to Base Rent for one month) as set forth in Section 1.10 above. The security deposit is not an advance payment of rent or a measure of liquidated damages in case of default by Tenant. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request, and Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

Section 3.03. Termination; Advance Payments. Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation), or any other termination not resulting from Tenant's default, and after Tenant has vacated the Leased Premises in the manner required by this Lease, Landlord shall refund or credit to Tenant (or Tenant's successor as authorized in writing by Landlord) the unused portion of the Security Deposit, and any advance rent or other advance payments made by Tenant to Landlord which apply to any time periods after termination of the Lease.

Section 3.04. Interest on Past Due Obligations. 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 (such lesser rate being referred to herein as the "Past Due Rate"). Interest shall accrue on monthly Base Rent payments and late charges from the fifth day of each Lease month until such payments are received by Landlord and, on returned check charges, from the date Landlord receives such returned check until such returned check is made good. All agreements between Landlord and Tenant, whether now existing or hereafter arising, whether herein contained or in any other instrument or agreement, whether written or oral, are hereby expressly limited so that

in no contingency or event whatsoever shall any acceleration of rents due, 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 rental payment next coming due hereunder, or, if such portion of charges exceeds the rental payment next coming due hereunder, such amount shall be refunded to Tenant. To the extent permitted by law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating, and spreading in equal parts during the period of the full term of this Lease, all amounts deemed as interest at any time contracted for, charged or received from Tenant in connection with this Lease.

Section 3.05. **Taxes.** Tenant shall pay any and all property taxes or assessments levied or assessed on: (i) all improvements, fixtures, equipment or personal property comprising a part of or located upon the Leased Premises; and (ii), the leasehold estate of Tenant created hereby; and (iii) the Leased Premises, improvements thereon and contents thereof (hereinafter referred to as “Tenant’s Taxes”). For the Lease Years for which this Lease commences and terminates, the provisions of this Section shall apply and Tenant’s liability for its proportionate share of any taxes and assessments for any such year shall be subject to a *pro rata* adjustment based on the number of days of any such Lease Year during the term of this Lease. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord “paid receipts” or other written evidence that all of Tenant’s Taxes have been paid by Tenant. If any of Tenant’s Taxes are included in tax statements delivered to Landlord, Tenant shall pay to Landlord that portion representing Tenant’s Taxes within ten (10) days after Tenant’s receipt of an invoice therefor from Landlord accompanied by evidence of Landlord’s computation of the portion thereof representing Tenant’s Taxes.

ARTICLE FOUR: UTILITIES AND SERVICES; INSURANCE

Section 4.01. **Utilities and Services.** During the Lease Term, Tenant shall pay for all utilities and utility services (including, without limitation, water, fuel, gas, oil, heat, electricity, power, air conditioning, sewer, telephone, and internet), materials, and services which may be furnished to it or used by it in or about the Leased Premises. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Leased Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services. Tenant, at its sole cost and expense, shall bring all necessary utilities to the Leased Premises.

Section 4.02. **Insurance.**

A. **Improvements.** During the Lease Term: (i) Tenant shall maintain at its own cost and expense a policy or policies of insurance (all risks) covering loss of or damage to the Building and other improvements on the Leased Premises for the full replacement value thereof; such insurance policy or policies shall name the Town of Addison, Texas as an additional insured, and the policy or policies must provide that any proceeds for loss or damage to the Building or to any improvements are payable solely to Landlord; and Tenant shall not use or permit the use of the Leased Premises or any part thereof for any purpose called extra hazardous by insurance companies; and (ii) Tenant shall maintain policies of insurance which cover loss or

damage to any improvements made by Tenant on or to the Leased Premises and for Tenant's furniture, fixtures, and equipment, in the full amount of their replacement value and which names the Town of Addison, Texas as an additional insured as its interest may appear. All such policies shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall not be required to obtain insurance for Tenant's equipment or any improvements constructed or placed by Tenant on the Leased Premises or any other improvements to the Building or otherwise installed by Tenant on the Leased Premises. Tenant shall not do or permit anything to be done which invalidates any insurance policies in connection with the Leased Premises.

B. Liability Insurance. During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Leased Premises. Such insurance must: (i) provide coverage against claims for bodily injury, death or property damage or destruction occurring on, in or about the Leased Premises; (ii) provide coverage to include products/completed operations (\$1,000,000 products/ completed operations aggregate) and XCU (Explosion, Collapse, Underground) hazards; (iii) specifically cover any claims arising under or relating to any indemnification obligations of Tenant to Landlord hereunder, including but not limited to obligations, liabilities or duties arising from or relating to Sections 2.02, 5.03 or 5.05 of this Lease; and (iv) include liquor liability coverage covering Tenant's potential liability to any person, including without limitation its invitees, customers, or any other person.

C. Payment of Premiums. Tenant shall pay all premiums for the insurance policies described in this Section 4.02 within ten (10) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due. Before the Lease Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.02. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy.

D. General Insurance Provisions.

1. With reference to the foregoing insurance requirements, Tenant shall specifically endorse applicable insurance policies as follows:
 - (a) The Town of Addison shall be named as an additional insured with respect to liability insurance and all property insurance.
 - (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
 - (c) A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the builders risk, property and all liability policies.

- (d) All insurance policies to be provided by Tenant shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
 - (e) All insurance policies to be provided by Tenant shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
 - (f) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
 - (h) With respect to insurance to be provided by Tenant, Tenant may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
 - (i) Tenant must purchase insurance from insurers that are financially acceptable to the Town of Addison.
2. The amount of any insurance set forth herein to be provided by Tenant shall be subject to reasonable increase or modification as Landlord may reasonably request. The amount and coverage of any insurance set forth herein shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.
 3. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above which is to be provided by Tenant, shall be furnished to Landlord prior to the Lease Commencement Date, with complete copies of policies furnished to the Landlord upon request. Landlord reserves the right to review and revise from time to time the types of insurance and insurance limits required herein. Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following: (a) sets forth all endorsements and insurance coverages according to requirements and instructions contained herein, and (b) shall specifically set forth the notice-of-cancellation or termination provisions to the Landlord.
 4. If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled, non-renewed or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.
 5. Tenant shall maintain all insurance required under this Lease with companies licensed to do business in the State of Texas. Insurance must be purchased and maintained from insurers that are acceptable to the Town of Addison. All

insurance must be written on forms filed with and approved by the Texas Department of Insurance. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

6. Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is fully covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage and such insurance fully pays for such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

ARTICLE FIVE: USE OF LEASED PREMISES

Section 5.01. **Permitted, Non-Permitted Uses.** Tenant may use the Leased Premises only for the Permitted Uses set forth in Section 1.07 above. Such Permitted Uses shall be conducted continuously and carried out in the entire Demised Premises, except during periods in which the Leased Premises may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations, all such repairs and alterations to be diligently pursued to completion. In no event shall the Leased Premises be used or occupied by any business where the gross sales of alcoholic beverages of such business shall exceed forty percent (40%) of the total gross sales of that business in any one Lease Year in any Lease Year or in any calendar year. Landlord shall be entitled to review Tenant's filings with state agencies, and Tenant shall provide such filings to Landlord, to confirm such percentage of alcoholic beverage sales. Tenant shall not conduct within the Leased Premises any fire, auction, going-out-of-business, flea-market, garage, or bankruptcy sale.

Section 5.02. **Manner of Use.** Tenant shall not cause or permit the Leased Premises to be used in any way (i) which constitutes a violation of any law, ordinance, or governmental regulation, rule, or order, (ii) which annoys or interferes with the rights of other tenants of Landlord, or (iii) which constitutes a nuisance or waste or lewd or indecent activities. Tenant shall not permit any objectionable or unpleasant odors to emanate from the Leased Premises other than normal restaurant odors; nor place or permit any radio, television, loud speaker, amplifier or sound system, live performances, or signs or devices emitting flashing lights, loud noises or vibrations on the roof or outside the Leased Premises. Tenant shall obtain and pay for all permits, including a certificate of occupancy, required for Tenant's occupancy of the Leased Premises and shall at its sole cost and expense promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Leased Premises, including without limitation the Occupational Safety and Health Act, the Americans With Disabilities Act, and the Texas Architectural Barriers Act (Tex. Rev. Civ. Stat. Ann. art. 9102 (Vernon)), as the same may be amended, modified or superseded.

Tenant shall procure, at its own expense, any permits and licenses required for the transaction of business on the Leased Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

Section 5.03. Hazardous Materials.

A. Throughout the Lease Term, Tenant shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises other than in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. For purposes of this provision, the term "Hazardous Materials" shall mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any applicable local, state, or federal law, rule, regulation, or order. Tenant shall indemnify, defend and hold harmless Landlord from and against the following, to the extent any of the following are covered by or related to Tenant's use or occupancy of the Leased Premises: (a) any loss, cost, expense, penalty, fine, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (herein referred to as "Remedial Work") required by or incurred by Landlord or any other person or party in a reasonable belief that such Remedial Work is required by any applicable federal, state or local law, rule, regulation or order, or by any governmental agency, authority, or political subdivision having jurisdiction over the Leased Premises; and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, or discharge of any Hazardous Materials on, under, in, above, to, or from the Leased Premises. In the event any Remedial Work is so required under any applicable federal, state, or local law, rule, regulation or order, Tenant shall promptly perform or cause to be performed such Remedial Work in compliance with such law, rule, regulation, or order. In the event Tenant shall fail to commence the Remedial Work in a timely fashion, or shall fail to prosecute diligently the Remedial Work to completion, such failure shall constitute an event of default on the part of Tenant under the terms of this Lease, and Landlord, in addition to any other rights or remedies afforded it hereunder, may, but shall not be obligated to, cause the Remedial Work to be performed, and Tenant shall promptly reimburse Landlord for the cost and expense thereof upon demand. Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

B. In connection with the Leased Premises, Tenant shall make all disclosures required by and comply with any laws, rules, regulations, orders, or ordinances regarding Hazardous Materials, and take all action required of such governmental authorities to bring the Tenant's activities on the Leased Premises into compliance with all laws, rules, regulations, orders and ordinances relating to Hazardous Materials and affecting the Leased Premises.

C. If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any Hazardous Materials has been released or has otherwise come to be located on or beneath the Leased Premises, such party shall, immediately upon discovery the release or the presence or suspected presence of the Hazardous Materials, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of a Hazardous Materials on or beneath the Leased Premises shall immediately notify the other party in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any law, rule, regulation, order, or ordinance, (ii) any claim made or threatened by any person against Landlord, Tenant, the Leased Premises and improvements arising out of or resulting from any Hazardous Materials, and (iii) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials.

D. Without in any way limiting any other provision set forth in this Lease, Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold harmless the Town of Addison, Texas, its officials, officers, employees, agents, attorneys, successors, and assigns (together for purposes of this paragraph, "Indemnified Persons") from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to or destruction of any property whatsoever, or other or other harm for which recovery of damages or any other type of recovery (whether at law or in equity) is sought, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the Leased Premises or any improvements thereon, or any discharge or release in or from the Leased Premises or any improvements thereon, of any Hazardous Materials, caused by or resulting from any act or omission of Tenant, or Tenant's officers, employees, agents, concessionaires, contractors, subcontractors, or invitees, whether before or during the Lease Term or at any time while Tenant occupies the Leased Premises, or (ii) Tenant's failure to comply with any law, rule, regulation, order, or ordinance relating to Hazardous Materials. The indemnity obligation created hereunder shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of or in connection with the Leased Premises, any improvements thereon, or this Lease. The obligations of the parties hereunder shall survive the expiration or earlier termination of this Lease.

Section 5.04. **Signs.** Tenant may not place any signs on the Leased Premises without Landlord's prior written consent, which may be withheld or conditioned in Landlord's sole and absolute discretion. All signs placed by Tenant on the Leased Premises shall be subject to any and all governmental ordinances, rules and regulations, including, without limitation, any requirement that Tenant obtain a permit for the placement of any sign. All expenses incurred in connection with any signage for Tenant's benefit will be borne solely by Tenant.

Section 5.05. **Indemnity; Liability.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all actions, causes of action, lawsuits, costs, judgments, fines, expenses, fees, claims or liability arising from or in connection with: (a) Tenant's use of the Leased Premises (including any act or omission of Tenant in connection with the Leased Premises); (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done (including, without limitation, the use, non-use, possession, occupation, condition, operation, holdover occupancy, maintenance or management of the Leased Premises or any part thereof) in or about the Leased Premises; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) any negligence, gross negligence, or intentional misconduct of Tenant. Tenant shall defend Landlord against any such action, cause of action, lawsuit, cost, judgment, fine, expense, fee, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any reasonable legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to or destruction of property or injury to or death of persons in or about the Leased Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's gross negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's officers, employees, agents, contractors, subcontractors, concessionaires,

and invitees, if applicable. The obligations under this Section shall survive the expiration or termination of this Lease Agreement.

Section 5.06. **Landlord's Access.** Landlord or its agents may enter the Leased Premises at all reasonable times to show the Leased Premises to any person; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or to do any other acts necessary or desirable for the use and operation of the Leased Premises or any of Landlord's property; provided, however, that Landlord shall use reasonable efforts not to unreasonably disturb Tenant's use of the Leased Premises. Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Lease" signs on the Leased Premises.

Section 5.07. **Quiet Possession.** If Tenant pays the Base Rent and Percentage Rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Leased Premises for the full Lease Term, subject to the provisions of this Lease and subject to Landlord's right to exercise its power of eminent domain in connection with the Leased Premises and this Lease.

ARTICLE SIX: **CONDITION OF LEASED PREMISES; MAINTENANCE, REPAIRS AND ALTERATIONS**

Section 6.01. **Existing Conditions.** Tenant accepts the Leased Premises in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations, rules, policies, and orders (as the same may be amended or modified). Tenant accepts the Leased Premises subject to: (i) the terms and conditions of this Lease Agreement, (ii) easements and rights-of-way, (iii) zoning ordinances and other ordinances, laws, statutes, regulations, or policies now in effect or hereafter promulgated by any governmental authority having jurisdiction over the Leased Premises. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Leased Premises or the suitability of the Leased Premises for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Leased Premises and is not relying on any representations of Landlord with respect thereto.

Section 6.02. **Landlord's Obligations.** Except as provided in Article Seven (Damage or Destruction) and Article Eight (Condemnation), Landlord shall keep the following in good order, condition and repair: the structural integrity of the foundation and exterior walls and roof of the Building. Landlord shall have no other responsibilities, duties or obligations with regard to the maintenance or repair of the Leased Premises. Without limiting the foregoing, Landlord shall not be obligated to maintain or repair windows, interior doors, plate glass or the interior or exterior surfaces of exterior walls. Landlord shall make repairs under this Section 6.02 within a reasonable time after receipt of written notice from Tenant of the need for such repairs.

Section 6.03. **Tenant's Obligations.**

A. Except as provided in Section 6.02, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Leased Premises (including,

without limitation, structural, nonstructural, interior, systems and equipment) in good order, condition and repair (including, without limitation, interior and exterior repainting and refinishing, as needed. Tenant will not allow any exterior windows applicable to the Leased Premises to be open during any period of rain, snow or ice and Tenant will cause such windows to be closed at all times during such periods of rain, snow, or ice. Any and all damage resulting from Tenant's failure to keep such windows closed will be the responsibility of Tenant. It is the intention of Landlord and Tenant that at all times Tenant shall maintain all portions of the Leased Premises in an attractive, first-class and fully operative condition.

B. Tenant shall fulfill all of Tenant's obligations under this Section 6.03 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Leased Premises as required by this Section 6.03, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency) enter the Leased Premises and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.04. Condition upon Termination. Upon the expiration or termination of this Lease, Tenant shall (i) surrender any keys, electronic ID cards, and other access control devices to Landlord at the place then fixed for the payment of Base Rent, and (ii) surrender the Leased Premises to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease, and free of any and all Hazardous Materials and environmental contamination. In addition, Landlord may require Tenant to remove any alterations, additions or improvements to the Leased Premises (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Leased Premises to its condition as of the time of the Effective Date or the date of the final completion of the Initial Tenant Improvements, whichever is later, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Leased Premises. Tenant shall repair, at Tenant's expense, any damage to the Leased Premises caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures (excluding decorative lighting and decorative lighting fixtures); wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; walk-in freezer; walk-in refrigerator; ventilation systems (including that portion thereof known as a vent-a-hood); or other similar building operating equipment and decorations.

ARTICLE SEVEN: DAMAGE OR DESTRUCTION

Section 7.01. Partial Damage to Leased Premises.

A. Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Leased Premises. If the Leased Premises is only partially damaged (i.e., less than fifty percent (50%) of the Leased Premises is untenable as a result of such damage or less

than fifty percent (50%) of Tenant's operations are materially impaired) by any cause whatsoever and if the proceeds received by Landlord from the insurance policies described in Section 4.02 are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, furniture, materials, or improvements.

B. If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which is maintained under Section 4.02, Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If the damage was due to an act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Tenant shall pay the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate the Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Leased Premises. Tenant shall pay the cost of such repairs, except that upon completion of such repairs to Landlord's satisfaction, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

C. If the damage to the Leased Premises occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02. Substantial or Total Destruction. Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Leased Premises. If the Leased Premises is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Leased Premises is greater than partial damage as described in Section 7.01), this Lease shall terminate as of the date the destruction occurred; provided, however, that if the Leased Premises can be rebuilt within six (6) months after the date of Landlord's receipt of insurance proceeds in connection with and directly related to the casualty, Landlord may elect (but will not be required) to rebuild the Leased Premises at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Landlord's receipt of insurance proceeds. If Landlord so elects, Landlord shall rebuild the Leased Premises at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03. Temporary Reduction of Rent. If the Leased Premises is destroyed or damaged and Landlord or Tenant repairs or restores the Leased Premises pursuant to the provisions of this Article Seven, any Rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Leased Premises is impaired; provided, however, that if the damage or destruction was caused by

any act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Rent shall not be reduced and Tenant shall have the continuing obligation to pay Rent in full during the period of such rebuilding or repair. Except for such possible reduction in Rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Leased Premises.

ARTICLE EIGHT: CONDEMNATION

If all or any portion of the Leased Premises is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate only as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first, and shall remain in effect as to the part remaining; provided, however, that if more than thirty percent (30%) of the floor area of the Leased Premises is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If this Lease is not terminated in its entirety, this Lease shall remain in effect as to the portion of the Leased Premises not taken, except that the Rent shall be reduced in proportion to the reduction in the floor area of the Leased Premises. Landlord shall receive the entire award or payment from any Condemnation, and Tenant shall have no claim to that award or for the value to Landlord of any unexpired term of this Lease; provided that Tenant shall have the right to appear in any Condemnation proceeding or action to negotiate, prosecute and adjust any claim attributable to loss or damage to Tenant's trade fixtures and removable personal property, removal or relocation costs, and any loss to Tenant resulting from the unexpired portion of the Lease Term. The termination of the Lease shall not affect the rights of the respective parties to such awards. If this Lease is not terminated in its entirety, Landlord shall repair damage to the Leased Premises caused by the Condemnation, except that (i) Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority, and (ii) if the Condemnation damages or payments received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to terminate this Lease.

ARTICLE NINE: **ASSIGNMENT AND SUBLETTING**

Section 9.01. **Landlord's Consent Required.** No portion of the Leased Premises or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, encumbrance, sublease, transfer, operation of law, act of Tenant, or any other conveyance, without Landlord's prior written consent, and Tenant shall have no right or authority to sell, assign, mortgage, encumber, sublease, transfer, or otherwise convey this Lease or the Leased Premises or any portion thereof. Landlord has the right to grant or withhold its consent in Landlord's sole discretion. Any attempted transfer or conveyance of any kind or by any method without consent shall be null and void and shall constitute a non-curable breach of this Lease, and Landlord will be entitled to terminate the Lease and any option or other right granted Tenant by this Lease. A transfer or conveyance will be deemed to occur if the person or persons who own or have voting control of 67% or more of Tenant on the Option Contract Date cease to own or have voting control of 67% or more of Tenant during the Lease Term and during any renewal term. Upon Tenant's execution of this Lease, Tenant shall give to Landlord a certification as to the ownership of voting securities or voting control of Tenant. Upon Landlord's request, Tenant shall provide a certification to Landlord as to the ownership of voting securities or voting control of Tenant.

Tenant may request, in writing, Landlord's consent to a proposed transfer and that request must include: (i) the name of the proposed transferee; (ii) the nature and character of the transferee's business; (iii) the term, use, rental rate, and all other material terms of the proposed transfer; and (iv) audited financial statements or other evidence of the proposed transferee's assets, liabilities, net cash flow, operating history, and other evidence Landlord may reasonably request to evaluate the financial capacity of the proposed transferee to perform its obligations.

Tenant will pay to Landlord all rent and other consideration Tenant receives in excess of the Base Rent payable under this Lease within 5 days after Tenant receives it. If Tenant fails to pay any such sum when due, Landlord may contact any transferee and require that transferee to make all payments due under the transfer directly to Landlord.

Section 9.02. **No Release of Tenant.** No transfer, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the Base Rent and Percentage Rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of Base Rent and/or Percentage Rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's approved transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee.

ARTICLE TEN: **DEFAULTS AND REMEDIES; LIEN**

Section 10.01. **Default by Tenant.** The following shall be deemed to be events of default by Tenant under this Lease:

A. Tenant shall fail to pay when due any installment of Base Rent, Percentage Rent or any other payment required pursuant to this Lease and that failure shall continue for a period of ten (10) days, or shall fail to keep in full force and effect any policies of insurance required under this Lease;

B. Tenant or any guarantor of Tenant's obligations hereunder shall (i) commit an act of bankruptcy; (ii) file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law; (iii) become insolvent; (iv) 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 Tenant or any guarantor of Tenant's obligations hereunder and the same is not dismissed within sixty (60) days; or (v) is named in a pleading or motion filed in any court proposing to reorganize or adjudicate as a bankrupt Tenant or any guarantor, and that pleading or motion is not discharged or denied within 30 days after its filing;

C. Tenant or any guarantor of Tenant's obligations hereunder shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors;

D. Tenant shall do or permit to be done any act which results in a lien being filed against the Leased Premises, and the same is not released or bonded around in manner satisfactory to Landlord within thirty (30) days;

E. the liquidation, termination, dissolution, forfeiture of right to do business, or (if the Tenant is a natural person) the death of Tenant or any guarantor of Tenant's obligations hereunder;

F. The leasehold estate is taken in execution, by writ, or by other process in any action against Tenant;

G. Tenant fails to continuously use the Leased Premises for their Permitted Use except as provided in Section 5.01;

H. Tenant abandons or vacates a substantial portion of the Leased Premises without Landlord's prior written consent. Tenant will be conclusively presumed to have abandoned the Leased Premises when Tenant, or any person acting on its behalf, has removed, is removing, or is preparing to remove (other than in the normal course of business) substantial amounts of goods, equipment, fixtures, or other property from the Leased Premises, and this presumption will supersede Section 93.002 of the Texas Property Code to the extent of any conflict; or

I. Tenant shall be in default of any other term, provision or covenant of this Lease, other than those specified in subsections A. through H., above, and such default is not cured within thirty (30) days after written notice thereof to Tenant.

Section 10.02. Remedies for Tenant's Default. Upon the occurrence of any event of default set forth in this Lease, Landlord shall have the option, in addition to any other rights set forth in this Lease, to pursue any one or more of the remedies set forth in this Section without any additional notice or demand:

A. Landlord may maintain this Lease in full force and effect, whereupon Landlord shall have the right to sue for all amounts of Base Rent and other amounts payable by Tenant to Landlord hereunder as the same come due.

B. Landlord may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover forthwith as damages a sum of money equal to the total of: (i) the cost

of recovering the Leased Premises (including attorneys' fees and costs of suit); (ii) the unpaid rent earned at the time of termination, plus interest thereon at the highest rate allowed by applicable law; (iii) the present value (discounted at the rate of six percent (6.0%) per annum) of the balance of the Base Rent and all other sums due hereunder for the remainder of the Lease Term less the present value (discounted at the same rate) of the fair market rental value of the Leased Premises for said period; and (iv) any other sum of money and damages owed by Tenant to Landlord.

C. Landlord may terminate Tenant's right of possession (but not this Lease) and may repossess the Premises by forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, in which event Landlord may relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord, in Landlord's sole and absolute discretion. For the purpose of such reletting, Landlord is authorized to make any repairs, changes, alterations, or additions in or to Premises which Landlord may consider to be necessary, in Landlord's reasonable judgment. If Landlord does not relet the Premises, then Tenant shall pay to Landlord as damages a sum equal to the amount of the Base Rent and all other sums due hereunder, plus the cost of recovering possession of the Premises, plus interest on all of the foregoing at the Past Due Rate. If the Premises are relet and a sufficient sum is not realized from such reletting (after paying the cost of recovering possession of the Premises, plus all of the costs and expenses of repairs, changes, alterations, and additions to the Premises, plus all expenses of reletting the Premises, plus interest on all of the foregoing at the Past Due Rate) to satisfy the Base Rent provided for in this Lease to be paid, plus all other sums owed by Tenant to Landlord, plus interest on all of the foregoing at the Past Due Rate, then Tenant shall satisfy and pay any such deficiency to Landlord upon demand therefor from time to time, and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this paragraph from time to time, and that no delivery or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord, nor shall such reletting be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention be given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

D. Landlord may make such payments and/or take such actions (including, without limitation, entering upon or within the Premises, by force if necessary) and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant covenants and agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the Past Due Rate from the date paid by Landlord.

E. At any time after an event of default by Tenant has occurred hereunder, Landlord shall have the right to change or modify door locks on entry doors to the Leased Premises, and/or terminate all utility services to the Leased Premises, and such right to modify or change locks and/or terminate utility services shall continue so long as Tenant is in default hereunder. Landlord shall not be obligated to furnish Tenant with a new key or to allow Tenant to enter the Leased Premises, or to reinstate any terminated utility services until and unless Tenant has cured any default hereunder. Landlord may take such action as is required to cure any breach or default by Tenant hereunder and bill Tenant for any expenses incurred by Landlord in curing such breach, and Tenant shall be obligated to pay such bill immediately upon its receipt by Tenant.

F. Landlord shall have the right to cause a receiver to be appointed in any action against Tenant to take possession of the Leased Premises and/or to collect the rents or profits derived therefrom. The appointment of such receiver shall not constitute an election on the part of Landlord to terminate this Lease unless notice of such intention is given to Tenant.

G. After terminating this Lease or Tenant's right to possession of the Premises, Landlord may, without notice to Tenant or any other party, remove any and all personal property located in the Premises and either dispose of or store such personal property at Tenant's expense.

H. In addition to the other remedies provided in this Lease, Landlord 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 Lease, or to a decree compelling performance of any other provisions of this Lease, or to any other remedy allowed at law or in equity.

I. In addition to the other remedies provided in this Lease, if any payment of Base Rent is not received by Landlord on or before the 5th day after its due day, or if any other payment hereunder due Landlord by Tenant is not received by Landlord on or before the 10th day after the date of delivery by Landlord to Tenant of an invoice or statement for such payment, a late payment charge of five percent (5%) of such past due amount shall become due and payable in addition to all other amounts owed under this Lease.

Notwithstanding any other remedy or provision set forth in this Lease: (i) if Landlord has made rent concessions of any type or character, or waived any rent, and Tenant defaults at any time during the term of this Lease, the rent concessions, including any waived rent, shall be canceled and the amount of the rent concessions shall be due and payable immediately as if no rent concessions or waiver of any rent had ever been granted; (ii) this Lease may be terminated by Landlord only by written notice of such termination to Tenant given in accordance with the notice provisions of this Lease, and no other act or omission of Landlord shall be construed as a termination of this Lease; (iii) all rights and remedies of Landlord herein or existing at law or in equity 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; (iv) Tenant agrees that acceptance of full or partial payments by Landlord after notice of termination or forfeiture will not constitute a waiver of the default, termination, or forfeiture unless Landlord agrees to a waiver in writing, nor affect any legal proceedings taken or to be taken by Landlord except to reduce Tenant's obligation to Landlord by the amount of such payment; and (v) waiver by Landlord of any defaults or breaches by Tenant of any provisions of this Lease shall not bar Landlord thereafter from requiring prompt performance by Tenant of the obligations of this Lease, nor shall Landlord be barred thereafter from immediate exercise of any of Landlord's rights or remedies in case of continuing or subsequent default or violation by Tenant.

10.03 LANDLORD'S LIEN. TENANT HEREBY GRANTS TO LANDLORD A SECURITY INTEREST TO SECURE PAYMENT OF ALL RENT AND OTHER SUMS OF MONEY COMING DUE HEREUNDER FROM TENANT, AND TO SECURE PAYMENT OF ANY DAMAGES OR LOSS WHICH LANDLORD MAY SUFFER BY REASON OF THE BREACH BY TENANT OF ANY COVENANT, AGREEMENT, OR CONDITION CONTAINED HEREIN, UPON ALL EQUIPMENT, INVENTORY, FIXTURES, FURNITURE, IMPROVEMENTS AND OTHER PERSONAL PROPERTY OF TENANT

PRESENTLY OR WHICH MAY HEREAFTER BE SITUATED ON THE LEASED PREMISES, AND ALL PROCEEDS THEREFROM. SUCH PROPERTY SHALL NOT BE REMOVED FROM THE LEASED PREMISES AT ANY TIME WITHOUT THE CONSENT OF THE LANDLORD UNTIL ALL ARREARAGES IN RENT AS WELL AS ANY OTHER SUMS OF MONEY THEN DUE TO LANDLORD HEREUNDER SHALL FIRST HAVE BEEN PAID AND DISCHARGED, AND ALL THE COVENANTS, AGREEMENTS, AND CONDITIONS HEREOF HAVE BEEN FULFILLED AND PERFORMED BY TENANT. IN ADDITION TO ANY OTHER REMEDIES PROVIDED HEREIN, IN THE EVENT OF DEFAULT, LANDLORD MAY ENTER THE LEASED PREMISES AND TAKE POSSESSION OF ANY AND ALL EQUIPMENT, FIXTURES, FURNITURE, IMPROVEMENTS AND OTHER PERSONAL PROPERTY OF TENANT SITUATED UPON THE LEASED PREMISES WITHOUT LIABILITY FOR TRESPASS OR CONVERSION. LANDLORD MAY SELL THE SAME AT A PUBLIC OR PRIVATE SALE, WITH OR WITHOUT HAVING SUCH PROPERTY AT THE SALE, AFTER GIVING TENANT REASONABLE NOTICE AS TO THE TIME AND PLACE OF THE SALE. AT SUCH SALE, LANDLORD OR ITS ASSIGNS MAY PURCHASE THE PROPERTY UNLESS SUCH PURCHASE IS OTHERWISE PROHIBITED BY LAW. UNLESS OTHERWISE PROVIDED BY LAW, THE REQUIREMENT OF REASONABLE NOTICE SHALL BE MET IF SUCH NOTICE IS GIVEN TO TENANT AT THE ADDRESS HEREAFTER PRESCRIBED AT LEAST FIFTEEN (15) DAYS PRIOR TO THE TIME OF THE SALE. THE PROCEEDS OF ANY SUCH DISPOSITION, LESS ALL EXPENSES CONNECTED WITH THE TAKING OF POSSESSION AND SALE OF THE PROPERTY, INCLUDING A REASONABLE ATTORNEY'S FEE, SHALL BE APPLIED AS A CREDIT AGAINST THE INDEBTEDNESS SECURED BY THE SECURITY INTEREST GRANTED IN THIS PARAGRAPH. ANY SURPLUS SHALL BE PAID TO TENANT AND TENANT SHALL PAY ANY DEFICIENCIES UPON DEMAND. UPON REQUEST BY LANDLORD, TENANT WILL EXECUTE AND DELIVER TO LANDLORD FOR FILING A FINANCING STATEMENT IN A FORM SUFFICIENT (OR IN LIEU OF EXECUTING SUCH A FINANCING STATEMENT, TENANT HEREBY AUTHORIZES LANDLORD TO FILE A FINANCING STATEMENT NOT SIGNED BY THE TENANT) TO PERFECT THE SECURITY INTEREST OF THE LANDLORD IN THE AFOREMENTIONED PROPERTY AND THE PROCEEDS THEREOF UNDER THE PROVISION OF THE UNIFORM COMMERCIAL CODE IN FORCE IN THE STATE OF TEXAS. ANY STATUTORY LIEN FOR RENT IS NOT WAIVED; THE SECURITY INTEREST HEREIN GRANTED IS IN ADDITION AND SUPPLEMENTARY THERETO. AT THE TENANT'S WRITTEN REQUEST, LANDLORD AGREES TO REASONABLY CONSIDER WAIVING THE LANDLORD'S SECURITY INTEREST GRANTED HEREIN WITH RESPECT TO TENANT'S PERSONAL PROPERTY.

Section 10.04 Mitigation of Damages

A. Both Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of the other party under this Lease.

B. Landlord and Tenant agree to the following criteria in connection with Landlord's obligation to mitigate damages after a default by Tenant under this Lease:

1. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Leased Premises until and unless Landlord obtains full and complete possession of the Leased Premises,

including without limitation, the final and unappealable legal right to relet the Leased Premises free of any claim of Tenant.

2. Landlord will not be obligated to offer the Leased Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other building which is owned by Landlord.
3. Landlord will not have any obligation to lease the Leased Premises for any rental less than the current rate then prevailing for similar space in comparable buildings in the same market area as the Leased Premises nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.
4. Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's sole judgment and opinion.
5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Leased Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Leased Premises is not a permitted use under the terms of this Lease.
6. Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Leased Premises suitable for use by any prospective tenant.
7. Landlord will have no obligation to advertise or expend any sums of money to market the Leased Premises.

If Landlord makes the Leased Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and Tenant hereby waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

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

Section 10.5. **Landlord's Default.** If Landlord should default or fail to perform any covenant, agreement, undertaking or obligation imposed upon it in this Lease, and such default shall continue for a period of thirty (30) days after service of written notice thereof upon Landlord by Tenant, Tenant may, at its option, upon ten (10) additional days notice served upon Landlord, perform such covenant, agreement, undertaking or obligation for and on behalf of Landlord, and recover damages against Landlord for breach thereon. Notwithstanding the foregoing, no officer, official, employee or agent of Landlord will have personal liability under this Lease or be personally liable for any claim, judgment or deficiency.

ARTICLE ELEVEN: **PROVISIONS RELATING TO FINANCING OR SALE**

Section 11.01. **Sale or Transfer by Landlord.** In addition to its other rights, Landlord, in its sole discretion, may sell, mortgage, assign, or otherwise transfer the Leased Premises or portion thereof and its rights, interests, and obligations under this Lease. Upon any such sale or other transfer, (a) the transferor Landlord will be released from any further obligations under this Lease; (b) the transferor Landlord will transfer the unused balance of any Security Deposit to the transferee Landlord; and (c) Tenant will attorn to the transferee Landlord and look solely to the transferee Landlord to perform any obligations of Landlord accruing on or after the effective date of the transfer.

Section 11.02. **Subordination.** Landlord shall have the right to subordinate this Lease to any, mortgage, or other encumbrance encumbering the Leased Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Leased Premises or the Lease. Tenant shall execute such further documents and assurances as such lender may require, provided that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Leased Premises during the Lease Term shall not be disturbed if Tenant pays the Rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

Section 11.03. **Attornment.** If Landlord's interest in the Leased Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Leased Premises and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Leased Premises upon the transfer of Landlord's interest.

Section 11.04. **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so. If Tenant fails to do so within ten (10) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document.

Section 11.05. **Estoppel Certificates.** Tenant shall, from time to time, upon Landlord's written request, execute, acknowledge and deliver to Landlord written estoppel certificates in form and substance acceptable to Landlord. Tenant shall deliver each requested certificate to Landlord within ten (10) days after Landlord's request for same. If Tenant does not deliver any requested certificate to Landlord within such ten-day period, Landlord and any prospective purchaser or encumbrancer may conclusively presume that the matters stated in the requested certificate are true and correct.

Section 11.06. **Tenant's Financial Condition.** Landlord may request financial statements to verify the net worth of Tenant or any assignee, transferee or guarantor of Tenant when Landlord has a reasonable need for such financial information. Without limiting the foregoing, the parties agree that Landlord shall have a reasonable need for such financial information in the event of default in the payment of Rent or other amounts due and owing under the Lease, the failure to keep in full force and effect any insurance required under this Lease, or the failure to pay any Tenant's Taxes. Landlord shall provide Tenant with a written request for such financial statements as Landlord shall reasonably require and Tenant and any assignee, subtenant or guarantor of Tenant, as applicable, shall deliver such financial statements to Landlord within thirty (30) days after receipt of written request from Landlord. Tenant represents and warrants to Landlord that Tenant's financial statement is a true and accurate statement as of the date of such statement.

ARTICLE TWELVE: LEGAL COSTS

Section 12.01. **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any reasonable costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include, among other things, reasonable legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. The Defaulting Party shall reimburse the Nondefaulting Party for any such reasonable costs or expenses upon ten (10) days written notice from the Nondefaulting Party. In the event that the parties cannot agree on which party is the Defaulting Party, the parties agree to submit that dispute to nonbinding mediation. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action, upon final adjudication, shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such reasonable attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Leased Premises by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action.

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13.01. **Landlord's Liability; Certain Duties.** Tenant shall give written notice to Landlord of any failure by Landlord to perform any of Landlord's obligations under this Lease. Landlord shall not be in default under this Lease unless Landlord fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty-day period and thereafter diligently pursued to completion.

Section 13.02. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.03. **Interpretation; Time of Essence.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Leased Premises with Tenant's expressed or implied permission. Time is of the essence of this Agreement.

Section 13.04. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Leased Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.05. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above, except that upon Tenant's taking possession of the Leased Premises, the Leased Premises shall be Tenant's address for notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.06. **Waivers.** All waivers must be in writing and signed by the waiving party, and Landlord's waiver of any right, or of Tenant's breach, on one or more occasions will not be deemed a waiver on any other occasion. Landlord's failure to enforce any provision of this Lease or its acceptance of Rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment from Tenant shall be binding on Landlord, nor shall be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other rights or remedies. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.07. **Recordation.** Tenant shall not record this Lease or any memorandum of this Lease without prior written consent from Landlord. Tenant agrees that it will, upon request of the Landlord, execute and deliver a Memorandum of Lease in recordable form for the purpose of giving record notice of this Lease.

Section 13.08. **Binding Effect; Choice of Law; Venue.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. Venue for any lawsuit, action or cause of action under this Lease shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Lease; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of

Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

Section 13.09. **Corporate Authority.** Each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation.

Section 13.10. **Joint and Several Liability.** If more than one party is signing this Lease as Tenant, such parties shall be jointly and severally liable for all obligations of Tenant.

Section 13.11. **Force Majeure.** Except as set forth below with respect to Tenant's obligation to pay Rent (Base Rent and Percentage Rent), if either party cannot perform any of its obligations due to events beyond such party's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. Notwithstanding any provision herein to the contrary, events beyond Tenant's control shall not excuse Tenant from the requirement to pay all Rent (Base Rent and Percentage Rent) hereunder on a timely basis.

Section 13.12. **Survivability of Rights and Remedies.** Any rights and remedies either party may have with respect to the other arising out of the performance or non-performance of this Lease Agreement shall survive the cancellation, expiration or termination of this Lease Agreement.

Section 13.13. **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. **Permit Approval.** Nothing contained in this Lease shall constitute approval by the Town of Addison for purposes of obtaining building permits, sign permits, zoning, occupancy permits, or any other permits or licenses which Tenant may be required to obtain.

Section 13.15. **Exhibits and Rider.** The attached Exhibit (Exhibit "A" – Legal Description) and Rider (Rider 1 – Renewal Option) are part of this Lease.

ARTICLE FOURTEEN: SPECIAL PROVISIONS

Section 14.01. **Broker's Fee.** Landlord shall pay to Tenant's Broker named in Section 1.08 above, a real estate commission of \$21,000.00 (such amount being three percent (3%) of the Base Rent amount to be paid by Tenant to Landlord during the Lease Term (\$140,000.00 each year for 5 years)). The commissions payable hereunder will be paid one-half (1/2) at the time of Lease execution (provided that Tenant pays to Landlord at the time of such execution the first month's rent and the Security Deposit) and one-half (1/2) on the Lease Commencement Date (provided that Tenant has occupied the Leased Premises and has commenced making payments of Base Rent hereunder). Tenant and Landlord acknowledge that no other brokers have been affiliated in any way with this Lease and both parties hold the other harmless of any claims from other brokers claiming by or through their respective party.

Section 14.02 **Access Easement and Use of Property.** Landlord hereby grants to Tenant during the term of this Lease a non-exclusive license to provide automobile access to Belt Line Road over Landlord's adjacent property as described in Exhibit "A" (Tract II therein) for the benefit of the Leased Premises. Tenant does hereby grant to Landlord and its tenant or successors and assigns a non-exclusive license to use, without charge, a portion of the Leased Premises as described in Exhibit "A" (Tract III therein) to provide vehicular access from Belt Line Road for the benefit of the Landlord's adjacent property. The non-exclusive Licenses granted herein to Tenant and Landlord shall be for the purpose of foot and vehicular ingress and egress. Landlord and Tenant shall not erect any curb or barrier between the Leased Premises and the Landlord's property which would interfere with the traffic, and shall cooperate with each other in providing reciprocal access between them. Tenant, at all times, shall maintain in good condition and repair the hard surface paving constructed on its tract and insure that ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld.

LANDLORD AND TENANT have signed this Lease at the place and on the dates specified adjacent to their signatures below.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

AMAR UNLIMITED, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Printed Name: _____

Dated: _____, _____

Title: _____

Dated: _____, _____

EXHIBIT "A"

LEGAL DESCRIPTION

In addition to the description of Tract I, Tract II and Tract III contained in this Exhibit "A", page 4 of this Exhibit is a general depiction (not to scale) of the Leased Premises and Landlord's adjacent property thereto.

RIDER 1

Renewal Option

1. **GRANT OF RENEWAL OPTION.** So long as (1) no Default has ever occurred under this Lease, (2) no condition exists which, with the passage of time or the giving of notice or both, would constitute a Default, and (3) Tenant continuously occupies and uses the Leased Premises for the Permitted Use, Tenant (but not any assignee, licensee, subtenant, or other transferee) will have the one (1) time option (**Renewal Option**) to renew this Lease for **one (1)** additional **Sixty (60)** month term (**Renewal Term**) (to begin upon the expiration of the initial Lease Term) on all of the terms and conditions expressed in this Lease, except that:
 - (a) no abatements or other concessions (if any) during the initial Lease Term will apply to the Renewal Term;
 - (b) the Base Rent for the Renewal Term shall be an annual charge equal to One Hundred Fifty Six Thousand Five Hundred Ten and No/100 Dollars (\$156,510.00). The Base Rent will be paid in advance in monthly installments, determined by dividing the annual rental amount set forth hereinabove by twelve (12) (so that each monthly payment shall equal Thirteen Thousand Forty Two and 50/100 Dollars (\$13,042.50));
 - (c) the Percentage Rent for the Renewal Term shall be in an amount determined by multiplying (i) six percent (6%), times (ii) the total Gross Sales made in or from the Leased Premises which are in excess of Two Million Fifty Seven Thousand Five Hundred Seventy One and No/100 Dollars (\$2,057,571.00) during the applicable Lease Year.
 - (d) Tenant will have no option to renew this Lease beyond the Renewal Term;
 - (e) Tenant will accept the Leased Premises and all leasehold improvements in their then-existing condition (*i.e.*, **AS IS, WHERE IS, AND WITH ALL FAULTS**) when the Renewal Term begins;
 - (f) Landlord will be entitled to add, update, or clarify any terms of the Lease in light of changes in any laws, statutes, case law, or circumstances, as long as such additional provisions do not substantially alter the obligations of Landlord and Tenant under this Lease; and
 - (g) In connection with the Renewal Term, Tenant shall construct and complete improvements to the Leased Premises (the "Renewal Term Tenant Improvements") with a construction value (design (architecture, engineering) costs plus construction costs (together,

“Construction Value”)) equal to or in excess of \$25,000.00. Such Renewal Term Tenant Improvements shall be constructed and completed following the commencement of the Renewal Term in accordance with subsection C.1 of this Section below; provided, however, that Tenant may, as set forth below in and in accordance with subsection C.2 of this Section, satisfy (to the extent of the Construction Value of the Pre-Renewal Term Improvements (as hereinafter defined)) all or part of the obligation to construct and complete the Renewal Term Tenant Improvements if Tenant has constructed improvements to the Leased Premises during the 24 month period preceding the commencement of the Renewal Term (the “Pre-Renewal Term Period”).

1. On the first day of the Renewal Term, Tenant shall deliver to Landlord plans and specifications for the proposed Renewal Term Tenant Improvements. Prior to any construction of any Renewal Term Tenant Improvements, Tenant shall submit plans and specifications for the Renewal Term Tenant Improvements to Landlord for Landlord’s review and consideration of approval. For purposes hereof, plans and specifications shall be deemed approved by Landlord if such plans and specifications are approved by the Town of Addison City Manager. If Tenant shall fail to deliver to Landlord bona fide plans and specifications for the Renewal Term Tenant Improvements on the first day of the Renewal Term, Landlord shall have the right to immediately terminate this Lease. If Landlord and Tenant have not reached final agreement on proposed plans and specifications for the Renewal Term Tenant Improvements before March 1, 2018, then either Landlord or Tenant shall have the right to immediately terminate this Lease (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease). If Landlord and Tenant reach mutual agreement as to plans and specifications for the Renewal Term Tenant Improvements in a timely fashion, then Tenant will thereafter promptly commence construction of the Renewal Term Tenant Improvements and proceed diligently to final completion of the Renewal Term Tenant Improvements under the following terms and conditions:
 - (a) Upon the final completion of the Renewal Term Tenant Improvements, Tenant shall present evidence to Landlord that the Construction Value of the Renewal Term Tenant Improvements is not less than \$25,000.00. Such evidence shall include true and correct copies of all invoices, receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof,

the amount actually paid and payment for such design and construction work, and such other information as Landlord may request. For purposes of this Lease, the Renewal Term Tenant Improvements shall be deemed completed upon the issuance by the Town of Addison of a final (non-temporary) certificate of occupancy and/or such other documents or approvals required or provided by the Town of Addison in connection with the construction and completion of the Renewal Term Tenant Improvements;

(b) In the event that the Renewal Term Tenant Improvements are not commenced and/or completed in accordance herewith, or if such evidence regarding the Construction Value of the completed Renewal Term Tenant Improvements has not been presented as set forth herein, Landlord shall have the right to immediately terminate this Agreement (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease); and

(c) All work done in connection with the Renewal Term Tenant Improvements shall be in accordance with paragraph D. of Section 2.02 and other applicable provisions of the Lease.

2. During the Pre-Renewal Term Period, Tenant may construct and complete improvements to the Leased Premises ("Pre-Renewal Term Improvements"). Such Pre-Renewal Term Improvements may satisfy, to the extent of the Construction Value of such Pre-Renewal Term Improvements, Tenant's obligation to construct and complete the Renewal Term Tenant Improvements provided:

(a) Tenant, prior to construction of any Pre-Renewal Term Improvements, submitted plans and specifications for the Pre-Renewal Term Improvements to Landlord for Landlord's review and consideration of approval, and such plans and specifications were approved by the Town of Addison City Manager;

(b) Tenant shall certify and present to Landlord, on the first day of the Renewal Term, evidence of the Construction Value of the Pre-Renewal Term Improvements. Such evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof, the amount actually paid and payment for such design and

construction work, and such other information as Landlord may request;

- (c) Tenant shall present evidence to Landlord, on the first day of the Renewal Term, that Tenant received from the Town of Addison a final (non-temporary) certificate of occupancy and/or such other document or approval required or provided by the Town of Addison in connection with the construction and completion of the Pre-Renewal Term Improvements; and
- (d) All work done in connection with the Pre-Renewal Term Improvements shall have been in accordance with subsection D. of Section 2.02 and all other applicable provisions of the Lease.

2. **EXERCISE OF RENEWAL OPTION.** To exercise its Renewal Option, Tenant must deliver written notice of its exercise to Landlord at least **180** days before December 31, 2017. If Tenant fails to deliver this notice before the specified time, the Renewal Option will automatically and immediately terminate.

If Tenant timely exercises the Renewal Option, the Lease will be extended for the Renewal Term without the necessity of executing any additional instrument. On either party's request, the parties will sign and deliver a written agreement evidencing any changes to the initial Lease during the Renewal Term.

3. **TERMINATION OF LEASE.** Any termination of the Lease during the initial Term will terminate all renewal rights under the Lease. Tenant's renewal rights are not severable from the Lease and none cannot be assigned, conveyed, pledged or otherwise transferred (and Tenant shall have no power or authority to do so), even if Landlord permits an assignment, conveyance, pledge, or other transfer of the Lease. Landlord's consent to any assignment, conveyance, pledge or other transfer of the Lease will not assign or transfer any renewal rights.
4. **BROKER'S FEE.** In the event that Tenant exercises the Renewal Option set forth herein in accordance herewith, Landlord shall pay to Tenant's Broker named in Section 1.08 of the Lease, a real estate commission of \$23,476.50 (such amount being three percent (3%) of the Base Rent amount to be paid by Tenant to Landlord during the Renewal Term (\$156,510.00 each year for 5 years)). Such commission will be paid one-half (1/2) at the time of Tenant's exercise of the Renewal Option and one-half (1/2) on the commencement of the Renewal Term (provided Tenant has continuously occupied the Leased Premises and is not in breach of the Lease beyond any applicable cure period).

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

OPTION CONTRACT

This Option Contract is made effective this 14th day of December, 2002 (the "Effective Date"), by and between the Town of Addison, Texas (the "Town") and Amar Unlimited, Inc., a Texas corporation ("Amar").

Recitals:

1. The Town is the owner of certain real property located in the Town of Addison, Dallas County, Texas, as more particularly described in Exhibit 1, attached to and made a part hereof (the "Property").

2. The Town, as Landlord, and Prufrock Restaurants, Inc. ("Prufrock"), as Tenant, entered into a Lease of the Property on June 13, 1991 (the "Existing Lease"). Phoenix Restaurant Group, Inc. ("PRG") is the successor to Prufrock Restaurants, Inc.

3. On September 30, 1997 the Town of Addison, Texas, DenAmerica Corp. ("DenAmerica", successor to Prufrock and predecessor to PRG), and CNL American Properties Fund, Inc. entered into that certain Tri-Party Agreement (the "Tri-Party Agreement") which sets forth certain terms regarding the Existing Lease. The successor to CNL American Properties Fund, Inc. is CNL APF Partners, LP ("CNL").

4. In October, 2001 PRG filed a bankruptcy proceeding under the United States Bankruptcy Code in United States Bankruptcy Court for the Middle District of Tennessee, Case No. 301-12306, 12164, 12166, 12163 and 12167. On May 16, 2002 the Bankruptcy Court entered an Order authorizing PRG to assume and assign its interest in the Existing Lease and the Tri-Party Agreement. PRG has entered into an agreement with Amar Unlimited, Inc. ("Amar") in which PRG has agreed to assign to Amar, and Amar has agreed to assume, the obligations of PRG under the Existing Lease and the Tri-Party Agreement. The closing of the assignment and assumption occurred on August 21, 2002 (the "PRG/Amar Closing").

5. In conjunction with its negotiation with PRG and CNL, Amar approached the Town of Addison, Texas regarding Amar receiving an option to enter into a lease agreement of the Property for an additional five (5) year term following the expiration of the Existing Lease (the "New Lease") (provided Amar is not, at the time of exercising such option, in default under the Existing Lease).

6. The parties have executed a Memorandum of Option concurrently with the execution of this Option Contract containing a summary of this Option Contract, which Memorandum is to be recorded, and which is incorporated herein by reference and made a part hereof.

NOW, THEREFORE, the Town of Addison, Texas and Amar Unlimited, Inc. agree as follows:

1. Grant of Option. For and in consideration of the payment of \$500.00 by Amar to the Town, the receipt of which is hereby acknowledged, the Town hereby grants to Amar the

exclusive right and option to lease the Property at the price and under the terms and conditions set forth herein; provided, however, that the grant of this option is subject to the following:

A. Amar shall be entitled to exercise this option only if, at the time of the exercise of the option, (i) Amar is not then in default of the Existing Lease, (ii) no condition exists which, with the passage of time or the giving of notice or both, would constitute a default under the Existing Lease, and (iii) Amar has continuously occupied the Property for the Permitted Use as set forth in the Existing Lease.

2. **Option Period.** The option to lease the Property shall commence on the date hereof and expire on June 30, 2012 (the "Option Period").

3. **Exercise of Option.** This option may be exercised by Amar at any time after December 31, 2011 and on or before 5:00 p.m. on June 30, 2012 (provided, however, that Amar shall not be entitled to exercise this option if, at the time of the attempted exercise of the option, Amar is then in default of the Existing Lease), by (i) depositing written notice of Amar's exercise of such option in the United States mail on or before 5:00 p.m. on the aforesaid date and (ii) by delivering written notice by hand of the exercise of this option to the Town, to the address set forth in Paragraph 7 below. Within ten (10) business days following the receipt of notice by the Town of Amar's exercise of the option, the Town and Amar shall execute the form of Lease Agreement which is attached hereto as Exhibit 2. If Amar fails to exercise this option before its expiration, the consideration paid herewith shall be retained by the Town.

4. **Automatic Termination.** If Amar fails to exercise the option in accordance with the terms of this Option Contract within the Option Period, or if at the time of Amar's attempted exercise of the option Amar shall then be in default under the Existing Lease, then the option to lease granted by this Option Contract and the rights thereunder of Amar shall automatically and immediately terminate without notice.

5. **Terms of Lease.** Upon proper exercise of the option in accordance with the terms of this Option Contract, the lease of the Property to Amar by the Town shall be made upon the terms and conditions set forth in the form of Lease Agreement attached hereto as Exhibit 2.

6. **Non-Assignability of Option.** Amar shall not and shall have no power or authority to assign, convey, pledge, or in any manner otherwise transfer (together, "transfer") this Option Contract or any right, duty or obligation hereunder without the prior written approval of the Town. Any transfer of this Option Contract or any right hereunder in violation of this provision shall render this Option Contract immediately null and void. The Town has the right to grant or withhold its approval in its sole discretion. A transfer will be deemed to occur if the person or persons who own or have voting control of 67% or more of Amar on the Effective Date cease to own or have voting control of 67% or more of Amar during the Option Period. Upon Amar's execution of this Option Contract, Amar shall give to the Town a written certification as to the ownership of voting securities or voting control of Amar as of the Effective Date. Upon the Town's request, Amar shall provide a written certification to the Town as to the ownership of voting securities or voting control of Amar. The certification shall be in a form acceptable to the Town and duly sworn to by an authorized officer of Amar with knowledge of the matters stated in the certification. In the event Amar shall fail to provide the Town with any such certification within twenty (20) calendar days after the Town's request for such certification, the Town shall have the right, in its sole discretion, to terminate this Option Contract.

7. **Notices.** Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed given as of the date of deposit in the U. S. Mail or upon actual receipt if delivered by hand. Mailed notices shall be addressed as set forth below, but each party may change his or her address by written notice in accordance with this Paragraph.

To the Town:

5300 Belt Line Road
Dallas Texas 75240-7606
Attention: City Manager

To Amar:

4460 Belt Line Road
Addison, TX 75001

8. **Entire Agreement.** This Option Contract and a Memorandum of Option executed on the same date as this instrument, which is incorporated herein by reference and made a part hereof, contain the entire agreement between the parties relating to the option herein granted. Any oral representations or modifications concerning this Option Contract and the accompanying Memorandum shall be of no force and effect, excepting a subsequent modification in writing, signed by the party to be charged and supported by consideration.

9. **Binding Effect.** This Option Contract and the accompanying Memorandum thereof shall bind and inure to the benefit of all the respective and authorized successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement the day and year first above written.

TOWN OF ADDISON, TEXAS

AMAR UNLIMITED, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Printed Name: _____

ATTEST:

Title: _____

By: _____
Carmen Moran, City Secretary

EXHIBIT 1

That real property generally located at 4460 Belt Line Road, Addison, Texas 75001, and as further described in the form of Lease Agreement attached to this Option Contract as Exhibit 2.

Council Agenda Item: #R14

There are no attachments for this Item.