

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road  
(972) 450-7000 Fax: (972) 450-7043

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**AGENDA**

**WORK SESSION OF THE CITY COUNCIL**

**6:00 P.M.**

**AND**

**REGULAR MEETING OF THE CITY COUNCIL**

**7:30 P.M.**

**MARCH 10, 2009**

**TOWN HALL**

**5300 BELT LINE ROAD**

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**WORK SESSION**

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Item #WS1 - Discussion regarding the Gershman, Brickner & Bratton, Inc., (GBB) Recycling Study.

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## REGULAR SESSION

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Pledge of Allegiance

Item #R1 - Consideration of Old Business.

Introduction of Employees

Discussion of Upcoming Events

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Item #R2 - Consent Agenda.

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#2a - Approval of the Minutes for:

February 24, 2009, Regular City Council Meeting and Work Session

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Item #R3 - Discussion regarding (i) delay of public hearing on the agreement(s) to operate and manage the Addison Airport on March 10, 2009, (ii) anticipated presentation, discussion and public hearing on the agreement(s) to be held by the City Council at its March 24, 2009 meeting, and (iii) anticipated finalization of the agreement(s) to be discussed and considered by the City Council meeting to be held on April 14, 2009.

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Item #R4 - Discussion and consideration of approval of a revision to the Tuition Reimbursement Policy #4.08 of the Town of Addison Employee Handbook.

Attachment:

1. Council Agenda Item Overview
2. Policy

Administrative Recommendation:

Administration recommends approval.

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Item #R5 - Discussion and consideration of approval of an ordinance for an exception to Sec 62-162 Premises signs and Sec 62-163 Area, for Wells Fargo, located at 3701 Belt Line Road.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture

Administrative Recommendation:

Administration recommends denial.

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Item #R6 - Discussion and consideration of approval of a resolution consenting to the assignment of a license agreement for the installation and maintenance of a telecommunications cable under Surveyor Boulevard and approval of a related Amendment to License Agreement and authorizing the City Manager to execute the same.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Assignment

Administrative Recommendation:

Administration recommends approval.

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Item #R7 - Discussion and consideration of approval of award of bid No 09-06 to Durable Specialties, Inc., in the amount of \$367,900.00, to install traffic signal equipment as part of the Town Wide Signal Upgrade Project.

Attachment:

1. Council Agenda Item Overview
2. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

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Item #R8 - REPLAT/Lot 2, Block A, Beltwood North – Airport Addition. Discussion and consideration of approval of a replat of one lot of 5.642 acres, located in an Industrial-3 zoning district, on the east side of Midway Road, between Kellway Drive and Commander Drive (in Carrollton), on application from S&B Investments, represented by Mr. Robert Wright of Pate Engineers.

Attachments:

1. Docket Map
2. Staff report
3. Plat

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 26, 2009, voted to recommend approval of the replat for Lot 2, Block A, Beltwood North – Airport Addition, subject to the following conditions:

1. Provide a drainage easement for Line 'A' as it accepts off-site drainage.
2. Label P.O.B.
3. Provide a reference distance from the proposed 10' water easement to a property corner.
4. Line Table – L4 and L19 must be the same bearing as property line.
5. Town does not require fire lane easements. Change fire lane easement to mutual access easement.
6. Is Volume 95041, Page 1058 a mutual access easement on Lot 3? Show bearings and distances for this existing easement so that its connection with the on-site easement can be confirmed.
7. Confirm if there's a gap between the off-site water easement and the north boundary. If so please indicate the distance. Please note that if a gap does exist between the north property line and the easement, an offsite easement will be necessary for this construction.
8. Extend proposed water easements on the plat around all meters, fire hydrants and the double check detector assembly for the fire service.
9. The location of the municipal boundary between Addison and Carrollton is incorrect. Please correct as required.
10. Specify to abandon the building line by this plat.
11. Indicate the site location in the Vicinity Map.
12. Label the water easement along Midway Road.
13. Provide a closure sheet.

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Voting Aye: Bernstein, Doherty, Gaines, Hewitt, Jandura, Wood  
Voting Nay: None  
Absent: None, one seat vacant

Administrative Recommendation:

Administration recommends approval.

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**EXECUTIVE SESSION**

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Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) about pending litigation, to wit:

A. *Eddins Enterprises, Inc. dba Friendly Aviation and RSP Management Services, Inc. v. The Town of Addison, Texas*, Case No. 05-08-00194-CV, Fifth District Court of Appeals, Dallas, Texas.

B. *Thielsch Engineering, Inc. v. Town of Addison, Texas, et al*, Cause No. 08-00463, 95th District Court, Dallas County, Texas.

C. *AN Collision Center of Addison, Inc. d/b/a Bankston Collision Center v. Dallas Area Rapid Transit (DART) and The Town of Addison, et al*, Cause No. 07-11965-A, 14th Judicial District Court, Dallas County, Texas.

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Item #ES2 - Closed (Executive) session of the Addison City Council, pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) on matters in which the duty of the attorney(s) to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code, regarding and relating to (i) the taxation of improvements at Addison Airport, and to (ii) *Ryan L. Adams v. Town of Addison*, U.S. Equal Employment Opportunity Commission (EEOC) Charge No. 450-2009-01945.

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Adjourn Meeting

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Posted:  
March 6 at 5:00 P.M.  
Lea Dunn - 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 **#WS1**

There are no attachments for this Item.

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

February 24, 2009  
6:00 P.M. – Town Hall  
5300 Belt Line Road  
Upstairs Conference Room

Council Members Present:

Mayor Chow, Councilmembers Braun, Hirsch, Lay, Mellow and Niemann

Absent:       None

Work Session

Item #WS1 - Discussion regarding an integrated web casting and public meeting management technology to enable users to access live broadcasts and/or on-demand video of Addison public meetings.

Hamid Khaleghipour led the discussion regarding an integrated web casting and public meeting management technology to enable users to access live broadcasts and/or on-demand video of Addison public meetings.

There was no action taken.

Item #WS2 -Discussion regarding the Addison Addvocates Volunteer Program.

Passion Hayes introduced Stacy Love who made the presentation regarding the Addison Addvocates Volunteer Program.

There was no action taken.

\_\_\_\_\_  
Mayor-Joe Chow

Attest:

\_\_\_\_\_  
City Secretary-Lea Dunn



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

February 24, 2009  
7:30 P.M. – Town Hall  
5300 Belt Line Road  
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Hirsch, Lay, Mellow and Niemann

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Deronda Roberts with the Police Department and Jose Flores with the Parks and Recreation Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

February 10, 2009, Regular City Council Meeting and Work Session  
February 12, 2009, Special Meeting of the City Council

Councilmember Niemann moved to approve the Minutes for the February 10, 2009, Regular City Council Meeting and Work Session, and February 12, 2009, Special Meeting of the City Council.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R3 - Swearing in of Don Daseke as Council Member filling a vacancy (by appointment) in the position of City Council Member of the Town of Addison until the May 9, 2009, general Town election.

Don Daseke was sworn in as Council Member filling a vacancy (by appointment) in the position of City Council Member of the Town of Addison until the May 9, 2009, general Town election.

Item #R4 - Presentation, discussion and **PUBLIC HEARING** regarding a proposed structure for the management agreement for Addison Airport.

Mayor Chow opened the meeting as a public hearing.

The following Addison residents spoke:

Mr. Bill Perry, 3837 Azure  
Mr. Tom Hunse, 14784 Winnwood  
Mr. Bill Signs, 4035 Rive

Mayor Chow closed the meeting as a Public Hearing.

Chris Terry presented this Item and discussed the goals of the negotiations for the proposed structure for the management agreement for Addison Airport.

There was no action taken.

Item #R5 - Discussion and consideration of approval of a purchase from Paradigm Traffic Systems, Inc., for traffic signal equipment in the amount of \$564,120.00, for the Town Wide Signal Upgrade Project.

Councilmember Braun moved to approve a purchase from Paradigm Traffic Systems, Inc., for traffic signal equipment in the amount of \$564,120.00, for the Town Wide Signal Upgrade Project.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R6 - Discussion and consideration of approval of a purchase from Motorola, Inc., through HGAC (Houston-Galveston Area Council) of a wireless traffic signal communication system in the amount of \$94,741.00, as part of the Town Wide Signal Upgrade Project.

Councilmember Niemann moved to approve a purchase from Motorola, Inc., through HGAC (Houston-Galveston Area Council) of a wireless traffic signal communication system in the amount of \$94,741.00, as part of the Town Wide Signal Upgrade Project.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann

Voting Nay: None  
Absent: None

Item #R7 - Discussion and consideration of approval of an ordinance providing for an exception to the City's sign ordinance (Sec 62-138, Holiday decorations) for the Village on the Parkway, 5100 Belt Line Road, Suite 1000 (Bed Bath and Beyond) to allow the continuous use of roofline decorative lighting.

Councilmember Niemann moved to deny approval of an ordinance providing for an exception to the City's sign ordinance (Sec 62-138, Holiday decorations) for the Village on the Parkway, 5100 Belt Line Road, Suite 1000 (Bed Bath and Beyond) to allow the continuous use of roofline decorative lighting and to extend the timeframe to keep the lights up until May 31, 2009; with the understanding that the lights are to remain off at all times.

Councilmember Braun seconded. Motion to deny, with the modification to the original request, carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R8 - Discussion and consideration of approval of a resolution designating the Dallas Morning News as the Town of Addison's official newspaper of record.

Councilmember Braun moved to approve Resolution R09-005 designating the Dallas Morning News as the Town of Addison's official newspaper of record.

Councilmember Hirsch seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R9 - Discussion and consideration of approval of a contract between the Dallas Morning News and the Town of Addison for the publication of notices and advertisements.

Councilmember Niemann moved to approve a contract between the Dallas Morning News and the Town of Addison for the publication of notices and advertisements.

Councilmember Lay seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R10 - Presentation of and discussion regarding the 1<sup>st</sup> Quarter Quarterly Review for the Period and Year Ended December 31, 2008.

Jason Cooley made the presentation and responded to questions regarding the 1<sup>st</sup> Quarter Quarterly Review for the Period and Year Ended December 31, 2008.

There was no action taken.

Item #R11 - Discussion and consideration of approval for the Police Department to purchase forty-three new ballistic vests for the majority of its sworn officers.

Councilmember Mellow moved to approve for the Police Department to purchase forty-three new ballistic vests for the majority of its sworn officers.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann

Voting Nay: None

Absent: None

Item #R12 - Submission, presentation, and discussion of a Racial Profiling Report to the City Council as required by State law.

Ron Davis made the presentation and responded to questions regarding the Racial Profiling Report as required by State law.

There was no action taken.

Item #R13 - Consideration and approval to enter into an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote Addison Perks and certain special events in the Town of Addison.

Councilmember Mellow moved to approve an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote Addison Perks and certain special events in the Town of Addison.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann

Voting Nay: None

Absent: None

Mayor Chow requested that Item #R15 be heard before Item #R14.

Item #R15 - Discussion and consideration of approval of an amendment to the Town's agreement with jimbockrause to provide marketing consultation, creative ad production services, administrative and account oversight for the Town's 2009 marketing and special events initiatives.

Councilmember Niemann moved to approve an amendment to the Town's agreement with jimbockrause to provide marketing consultation, creative ad production services, administrative and account oversight for the Town's 2009 marketing and special events initiatives.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R14 - Consideration and approval to enter into an agreement with jimbockrause to develop a brand position for the Town of Addison in amount not to exceed \$40,000.

Mayor Chow recognized Addison resident Chris Mulvaney, 3867 Lakeview Court, who spoke on this Item.

Councilmember Lay moved to approve an agreement with jimbockrause to develop a brand position for the Town of Addison in amount not to exceed \$40,000.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Item #R16 - Discussion and consideration of approval of the payment of \$50,000.00 to assist with advertising for Cavanaugh Museum.

Councilmember Mellow moved to approve a payment of \$50,000.00 to assist with advertising for Cavanaugh Museum.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

Councilmember Braun recused himself for Item #R17 and left Council Chambers. He did not participate in the discussion or vote.

Item #R17 - Discussion and consideration of approval of a Supplemental Agreement to the Agreement for Professional Service with Icon Consulting Engineers, Inc., in an amount not to exceed \$58,500.00, for additional professional services on the Vitruvian Park Phase 1 Infrastructure project.

Councilmember Niemann moved to approve the Supplemental Agreement to the Agreement for Professional Service with Icon Consulting Engineers, Inc., in an amount not to exceed \$58,500.00, for additional professional services on the Vitruvian Park Phase 1 Infrastructure project.

Councilmember Lay seconded. Motion carried.

Voting Aye: Chow, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None  
Abstaining: Braun

Councilmember Braun returned to Chambers.

At 10:29 P.M., Mayor Chow announced that Council would convene into Executive Session to discuss the following Item:

Item #ES1 - Closed (executive) session of the City Council pursuant to Section 551.074, Texas Government Code, to deliberate a performance evaluation and employment of the City Manager.

The Council came out of Executive Session at 11:19 P.M.

Item #R18 - Discussion and consideration of approval of a compensation agreement between the Town and the City Manager.

Councilmember Niemann moved to approve the City Manager's salary and car allowance for the year beginning January 1, 2009, at the same level as the prior year and a compensation agreement updating and restating an existing compensation agreement between the Town and City Manager.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Daseke, Hirsch, Lay, Mellow and Niemann  
Voting Nay: None  
Absent: None

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

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn

**Council Agenda Item: #R3**

There are no attachments for this Item.



## **Council Agenda Item:#R4**

### **SUMMARY:**

Consideration and approval of revisions to the Tuition Reimbursement Policy #4.08 of the Town of Addison Employee Handbook.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

The Town of Addison's Employee Handbook was adopted by Council on June 10, 2008 which included the Tuition Reimbursement Policy #4.08. This policy provides tuition reimbursement for regular full-time and part-time employees who attend classes at any accredited college or university for which the employee earns a grade of "C" or better. Full-time employees receive 100% reimbursement. Reimbursement for regular part-time employees is pro-rated depending on the number of hours per year the employee is authorized to work.

In the adopted policy it states that tuition reimbursement and grade bonuses are not available for expenses already covered by other types of assistance or benefits, such as scholarships, grants, loans or other programs. However prior to the adoption of the Employee Handbook, past practice was to approve tuition reimbursement to employees regardless of whether they applied for loans. Therefore, to be consistent with past practice and policy, the revised policy clarifies that employees who receive loans will be eligible for reimbursement.

### **RECOMMENDATION:**

Staff recommends adopting the revisions to the Tuition Reimbursement Policy #4.08.

## **SECTION 4.08 TUITION REIMBURSEMENT**

Regular full-time and part-time employees are eligible for tuition reimbursement for classes at any accredited college or university for which the employee earns a grade of “C” or better. Full-time employees receive 100% reimbursement. Reimbursement for regular part-time employees is pro-rated depending on the number of hours per year the employee is authorized to work.

Approval from Human Resources is required prior to enrollment in a class for which tuition reimbursement will be requested. College hours received from colleges and universities will be recognized only if the institution is accredited by a national accrediting organization in the United States. It is the employee’s responsibility to furnish documentation of the accreditation prior to enrolling in any course of study program.

Specialized accreditations, those that accredit only specific kinds of schools, such as home study institutions or trade and technical schools, will not be recognized unless written approval was given prior to the implementation of this policy.

In addition to reimbursement for tuition and certain fees, the Town will also reward the employee’s efforts with grade bonuses. Full-time employees earn an additional \$100 for an “A”, \$75 for a “B” and \$25 for a “C,” based on courses of three semester hours and adjusted for courses earning more or less than three semester hours. For a passing grade in a three hour pass/fail course, the employee will receive a grade bonus of \$50.

Tuition reimbursement requests must be forwarded to the Human Resources Department with documentation of the completed course, the final grade and tuition costs. Tuition reimbursement and grade bonuses are paid through payroll.

Temporary, seasonal and employees still in the new hire probationary period are not eligible for tuition reimbursement or grade bonuses. Classes taken during any portion of the probationary period will not qualify for this benefit.

Tuition reimbursement and grade bonuses are not available for expenses already covered by other types of assistance or benefits, such as scholarships, grants, ~~loans~~ or other programs. Please contact the Human Resources Department for clarification of eligibility.

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE  
STAFF REPORT  
ME 2009-2**

Date: February 23, 2009  
Business: Wells Fargo  
Location of Request: 3701 Belt Line Rd

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>																		
<p>Sec. 62-162 Premises Sign (C) There shall be only one sign for each façade for each tenant.</p> <p>Sec. 62-163. Area. Total effective area of attached signs shall not exceed the following schedules: (1) On an attached sign located at a height of up to 36 ft, the effective area is limited to 1 sq ft of sign area for each linear foot of building frontage not to exceed 100 sq ft (2) An attached sign located at or exceeding a height of 36 ft shall be permitted an increase in maximum effective area. Such increases shall not exceed 4 sq ft in effective area for each additional 1 ft of height above 36 ft measured from the base of the sign to the building grade. (3) Attached signs may be located on each façade; however, the sum of the effective area of all attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. (4) Building with 4 or more stories in height may have not more than 2 attached signs per façade provided that: a. Each sign is designated for a separate tenant. b. One sign must be located on or near the uppermost story of the building while the 2<sup>nd</sup> sign is to be located on the 1<sup>st</sup> or ground level floor. c. Signs may be no closer than 30 ft apart. d. The combined effective sq footage of both signs may not exceed twice the allowed effective sq footage as specified in subsections (1) and (2) of this section. (5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule:</p> <table border="1" data-bbox="941 1218 1169 1512"> <thead> <tr> <th>Sign Height (feet)</th> <th>Letter/Logo Height (inches)</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>0 - 36</td> <td>16</td> <td></td> </tr> <tr> <td>37 - 48</td> <td>36</td> <td></td> </tr> <tr> <td>49 - 100</td> <td>48</td> <td></td> </tr> <tr> <td>101 - 150</td> <td>60</td> <td></td> </tr> <tr> <td>151 and up</td> <td>7</td> <td></td> </tr> </tbody> </table> <p>a. Letter heights in excess of 72 inches must be approved by the city council. b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height. (6) Copy on awnings is allowed in accordance with the above regulations for area and letter height. For back-lit awnings, the area of the sign shall be based on the area of the awning that is back-lit or illuminated.</p>	Sign Height (feet)	Letter/Logo Height (inches)	Maximum	0 - 36	16		37 - 48	36		49 - 100	48		101 - 150	60		151 and up	7		<p>The applicant is requesting: 1. Wells Fargo Signs on the south façade and on the north facade approximately 31 sq ft in area each and with more than 50% of the letters 18" in height. 2. An additional ATM sign on the south facade approximately 22 sq ft in area.</p>	<p>The ordinance allows: 1. Only 50% of the letters may be up to 20" in height. 2. Only one sign per tenant per façade is allowed. ORD NO 005-009 passed Feb 05 allowed a second sign with an area of 18 sq ft, a logo 24" in height and more than 50% of the letters 20" in height.</p>
Sign Height (feet)	Letter/Logo Height (inches)	Maximum																		
0 - 36	16																			
37 - 48	36																			
49 - 100	48																			
101 - 150	60																			
151 and up	7																			

**STAFF RECOMMENDATION:** The Wells Fargo sign on the north facade is located approximately 85' from Marsh Ln, the one on the south facade is located approximately 72' from Belt Line Rd, and the ATM sign on the south facade is located approximately 82' from Belt Line Rd. Staff recommends denial of the signs as requested.

**STAFF:** *Lynn Chandler*  
Lynn Chandler, Building Official



25' Ingress/Egress & Utility Easement  
VOL. 2000124, PG. 4596

INGRESS/EGRESS ESMT.  
Vol. 78222, Pg. 746

POINT OF BEGINNING

EXIST. SHARED DRIVE TO REMAIN  
REMOVE/RELOCATE EXIST. WATER METERS, AS REQ'D

MARSH LANE  
(100' R.O.W.)

LOT 3  
MARSH / BELT LINE SHOPPING CENTER  
VOL. 2000124, PG. 4596

S 89°49'34" E - 171.06

PROPOSED BUILDING

LOT 2 SHOPPING CENTER  
MARSH/BELT LINE SHOPPING CENTER  
24,754 SQUARE FEET  
0.5683 ACRES

Sanitary Sewer Esm't.  
Vol. 78155, Pg. 0001

30' Visibility Triangle

N 46°06'57" W  
22.32'

CLOSE EXIST DRIVE  
PROPOSED 2' R.O.W.

EXIST P.P. TO BE RELOCATED

BELT LINE ROAD  
(100' R.O.W.)

DRAINAGE & UTILITY ESMT.  
VOL. 2000124, PG. 4596

EXIST DRIVE TO REMAIN

SQU  
BUIL  
CAN  
TOT  
PAR  
REQ  
PRO

**SITE PLAN**

SCALE: 1"=20' (22x34)  
1"=40' (11x17)

POLE SIGN

ATTACHED SIGN

ORDINANCE NO. 005-009



7 I C I OFFICE OF THE CITY SECRETARY

Not To Scale



BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

**Application for Meritorious Exception to the Town of Addison Sign Ordinance**

Application Date: 2/25/09

Filing Fee: \$200.00

Applicant: WILLOW CREEK SIGNS

Address: 2633 BLUE MOUND RD WEST

Suite#: \_\_\_\_\_

HASLET                      TEXAS                      76052  
City                              State                              Zip

CELL 817-401-5425  
Phone#: 817-847-0571 EXT.109

Fax#: 817-847-0579

Status of Applicant:    Owner \_\_\_\_\_    Tenant \_\_\_\_\_    Agent X \_\_\_\_\_

Location where exception is requested:

3701 BELTLINE ROAD

Reasons for Meritorious Exception:

WELLS FARGO WOULD LIKE TO INSTALL 18" H. WELLS FARGO CHANNEL LETTERS OVER THE NORTH AND SOUTH ENTRANCES TO THE BANK LOBBY. (SIGNS E002 & E003). CITY CODE ONLY ALLOWS 16" LETTERS TO BE USED IF USED BY THEIR SELF. 18" H. LETTERS COULD BE USED IF OTHER LETTERS ARE USED AND MAKE UP 50% OF THE SIGN. WE FEEL THE 18" H. LETTERS FIT BETTER IN THE OPEN GABLE SPACE AND THEREFORE LOOK BETTER FOR THESE TWO ELEVATIONS. THE SOUTH ELEVATION FACES BELTLINE ROAD WHICH IS 100' WIDE AND THE BUILDING IS SET BACK 63'. THESE LETTERS NEED TO BE 18" H. LETTERS TO BE EASILY READ FOR THE EAST BOUND TRAFFIC. PLEASE SEE ATTACHED PAGE.

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- |                                   |   |
|-----------------------------------|---|
| 1. Lot Lines                      | 5. Proposed Signs                                     |
| 2. Names of Adjacent Streets      | 6. Sketch of Sign with Scale and Dimensions Indicated |
| 3. Location of Existing Buildings | (8.5 x 11 PLEASE)                                     |
| 4. Existing Signs                 |   |

Date Fees Paid \_\_\_\_\_ Check # \_\_\_\_\_ Receipt # \_\_\_\_\_



# Inventory Recommendation Detail

**WELLS FARGO - ADDISON**

Customer Site: 105898  
701 BELTLINE ROAD  
ADDISON, TX 75001

**EXHIBIT - 1**

**E002**

**INVENTORY**

Sign Text		
Century Bank w/flag		
Existing Sign Type		
Channel Letterset		
Height	Width	Depth
4'-3"	8'-0"	4"
Letter Height	OAH Above Grade	
1'-8"	N/A	
Face Material	Sign Material	
Plex	Aluminum	
Visible Opening	Retainer Size	
N/A	N/A	
Surface Material	Surface Color	
Drivit	Tan	
Available Height	Available Width	
10'-1 1/2"	13'-6"	
Illumination Type	Double Faced	
Internal	NO	
Mount		
Flush-Wall		



**Comments**



**18" Letters**



**16" Letters**

**Comments**  
Remove existing sign, restore wall, install new sign, and make electrical connection.



# Inventory Recommendation Detail

**WELLS FARGO - ADDISON**

Customer Site: 105898  
701 BELTLINE ROAD  
ADDISON, TX 75001

**EXHIBIT - 2**

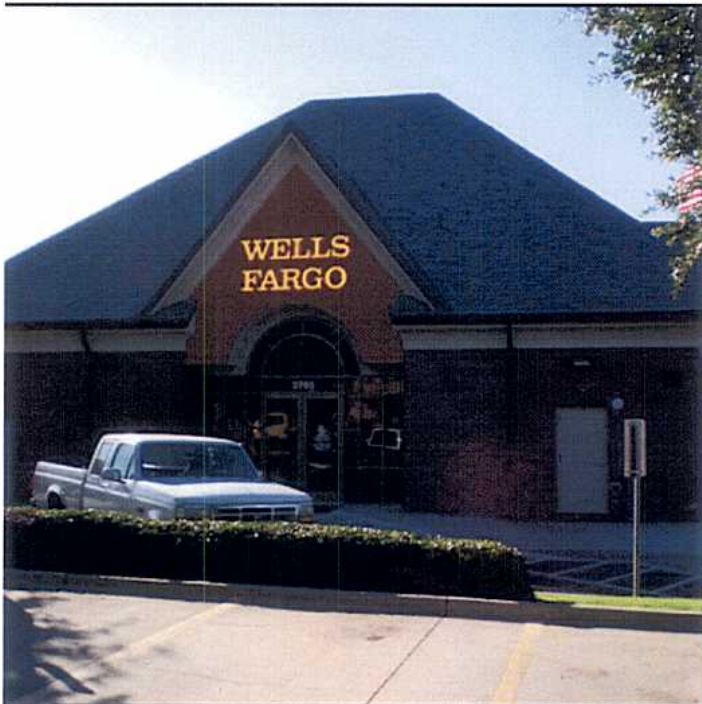
**E003**

**INVENTORY**

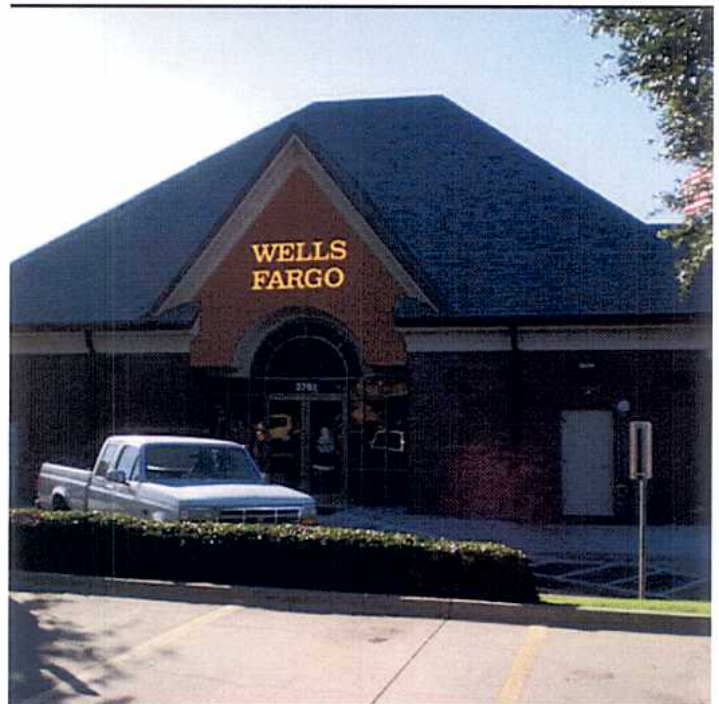
Sign Text		
Century Bank w/flag		
Existing Sign Type		
Channel Letterset		
Height	Width	Depth
4'-3"	8'-0"	4"
Letter Height	OAH Above Grade	
1'-8"	N/A	
Face Material	Sign Material	
Plex	Aluminum	
Visible Opening	Retainer Size	
N/A	N/A	
Surface Material	Surface Color	
Drivit	Tan	
Available Height	Available Width	
10'-1 1/2"	13'-8"	
Illumination Type	Double Faced	
Internal	NO	
Mount		
Flush-Wall		



Comments



18" Letters



16" Letters

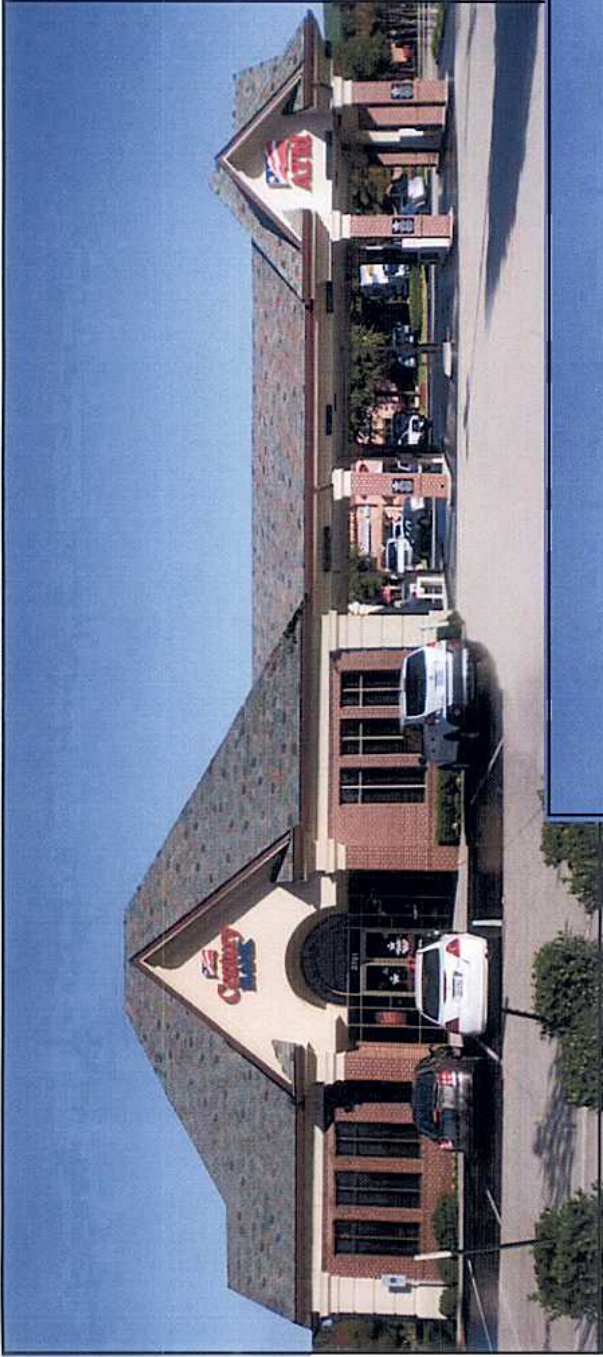
Comments
Remove existing sign, restore wall, install new sign, and make electrical connection.



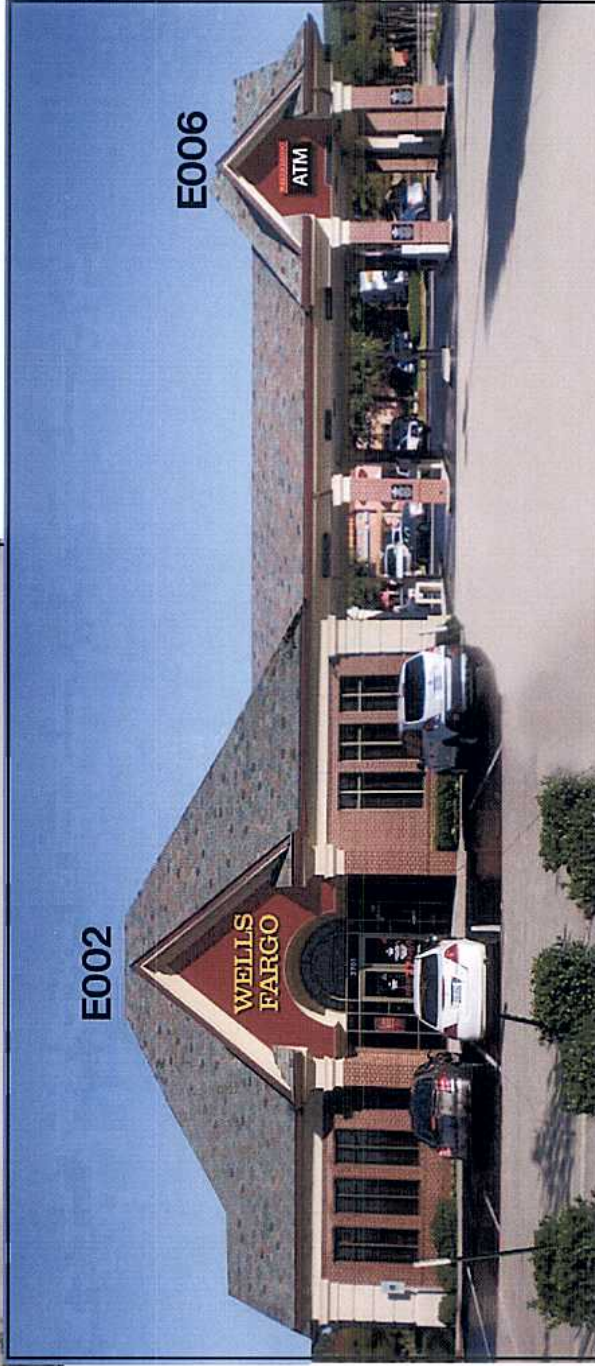




# EXHIBIT - 4



South Elevation - Before



South Elevation - After



**DISCLAIMER:** Renderings are for graphic purposes only and not intended for actual construction dimensions. For windload requirements, actual dimensions and mounting detail, please refer to engineering specifications and install drawings.

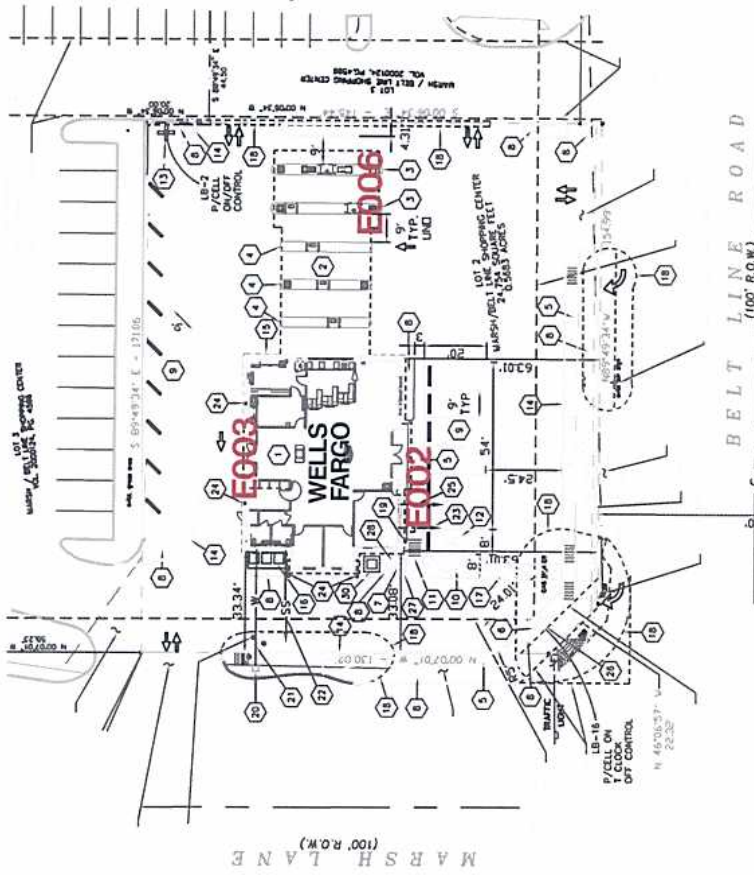
These drawings and designs are the exclusive property of Everbrite, LLC Use of, or duplication in any manner without express written permission of Everbrite, LLC is prohibited.

Customer: Wells Fargo		Description: Re-Image of Building Signs	
Project No: 2471148-1	Scale: NTS		
Date: 2/24/09	Drawn By: RB	Please read carefully, check appropriate box and fax back to Everbrite: <input type="checkbox"/> Sketch OK as is <input type="checkbox"/> New sketch required	
Location & Site No: Addison, TX Site: WF105898		SIGNATURE _____	DATE _____

**Customer Approval:** NOTE: Unless specified by customer, all depth of embossing will be determined by Everbrite Engineering or existing customer specifications on file. Colors and graphics on file will be used unless otherwise specified by customer.



WELLS FARGO 105898  
3701 BELTLINE RD  
ADDISON, TX 75001



SITE PLAN

REVISED 3/3/5: RELOCATED POLE SIGN/20' SETBACK  
REVISED 2/21/5: VISIBILITY TRIANGLE & POLE SIGN  
REVISED 1/12/5: VISIBILITY TRIANGLE/MOVED TO VISIBILITY TRIANGLE LINE  
REVISED 11/8/4: ADDED #30 PAD MOUNT TRANSFORMER  
REVISED 11/2/4: RELOCATED MONUMENT SIGN #6 & ADDED LANDSCAPE AREA ADJACENT

# EXHIBIT - 5

## LEGEND

- 1 NEW BANK BUILDING, REF. FLOOR PLAN
- 2 DRIVE-THRU BANK FACILITY
- 3 ISLAND, REF. DETAIL "A" DWG. NO. 2
- 4 ISLAND, REF. DETAIL "B" DWG. NO. 2
- 5 SIDEWALK, SEE NOTE 1
- 6 POLE SIGN (LIGHTED)
- 7 FLAG POLE, REF. DETAIL "D" DWG. 3
- 8 PLANTING AREA - PROVIDE BUGH GRADING TO 4" BELOW TOP OF CURB, SEE DETAIL "A", TYPE, LANDSCAPING CONTRACTOR (N.I.C.) PLAN, TO PROVIDE TOPSOIL TO FINISH GRADES
- 9 PARKING SPACE (9'x20'TYP) W/ 4" STRIPPAID YELLOW PARKING STRIPE
- 10 NO PARKING STRIPING
- 11 HANDICAP RAMP (REF. DETAIL "A", DRAWING NO. 3)
- 12 1:12 MAX. SLOPE
- 13 4" PAINTED HANDICAP SYMBOL
- 14 AREA LIGHT (5-5) REF. FIXTURE SCHEDULE, DWG. E-1 (W/2) 4" CONDUIT TO BANK PANEL BO. FOR USE REF. DETAIL "E", DWG. 3
- 15 CONCRETE CURB
- 16 PIPE RAIL CURB, REF. DET "H", SHEET 2
- 17 HVAC CONDENSING UNIT LOCATION, PROVIDE PERMITTED CONC. PAD LOCATION WITH DRAINER, CLEARANCES & PROMOTE SCREEN, REF. DET "D" SHEET 3
- 18 ADA COMPLIANT ACCESSIBLE ROUTE FROM PUBLIC SIDEWALK TO ACCESSIBLE PARKING ENTRANCE
- 19 MINIMUM WIDTH OF 36", 1:20 MAX. SLOPE (SEE CURB DETAIL), LEGS MAX. 1:2 SLOPE (OVER 14" INGRADE LEVEL WITH 1:2 FINISH CONC., U.N.O., HEADROOM: 60" MIN.
- 19 EXISTING CURB TO BE REMOVED
- 20 HANDICAP SIGN, REF. DETAIL "C", DWG. NO. 3
- 21 5/8" WATER METER FOR BUILDING AND 1" WATER METER FOR LANDSCAPING (METER & TAP PER LOCAL REGS)
- 22 1 1/2" TYPE X COPPER WATER SERVICE LINE TO BUILDING PER LOCAL REGS
- 23 4" PVC SANITARY SEWER PER LOCAL REGS; MAX. SLOPE 2% - REF. PLUMBING PLAN (FIELD VERIFY LOCATION)
- 24 ELECT. SERVICE TO BLDG. (FIELD VERIFY LOCATION)
- 25 PVC DRAINPIPE CONNECTED TO DOWNSPOUT LEADER, REF. DETAIL "G", DWG. NO. 2
- 26 2-4" CONDUITS WITH PULL WIRE TO TELEPHONE COMPANY EXEMPT. PROVIDE MARKING AND TELEPHONE COMPANY EXEMPT LOCATION, TELEPHONE SERVICE POINT AND CONDUIT ROUTING WITH PHONE COMPANY
- 27 WEATHERPROOF JUNCTION BOX/FOCAL SWITCH MOUNTED ON SIGN FOR EXEMPT MARKING REQUIREMENTS AND LOCATION WITH SIGN CONTRACTOR
- 28 FLAG SPOUTLIGHT, REF. FIXTURE SCHEDULE, SHEET E-1
- 29 BUILDING SPOT LIGHT REF. ENCLURE SCHEDULE, DRAWING NO. E-1
- 30 4" PVC IRRIGATION SLEEVE. PLACE 12" BELOW PAVEMENT WITH SAND BED BETWEEN. EXTEND TO 1' BEYOND EDGE OF CONCRETE CURB & FLAG. (NOT SHOWN, FIELD LOCATE)
- 31 4" WATER LINE FOR BUILDING FIRE PROTECTION SPRINKLER SYSTEM SUPPLY NOT SHOWN, REF. DRAWINGS PROVIDED BY OTHERS
- 32 PAD MOUNT TRANSFORMER

## SITE PLAN NOTES

- 1 ALL VARIET 4-1/2" REINFORCED CONCRETE OVER CURB/CURB
- 2 THE A. SWAYN LOCATION OF ALL EXISTING UTILITIES IS TO BE IN ACCORD WITH ARCHITECT TO BE DETERMINED WITH TAPERS AND RESOURCES PRIOR TO CONSTRUCTION WORK.
- 3 PROVIDE ALL CONDUITS OUTSIDE THE CONSTRUCTION AREA. THIS INCLUDES TRUCK LANDSCAPING TRUCKS, ETC. (IF APPLICABLE) SUBJECT TO BRUSHING, CONDITION.
- 4 SEE HCP FOR ADDITIONAL REQUIREMENTS
- 5 PROVIDE FINISH GRADING TO 1/4" FROM TOP OF CURB/WALK IN ALL AREAS ON GRADUALLY TO DRAIN
- 6 SEE TO PROVIDE UTILITY CONDUITS AND PIPING, INCLUDING METERS AND TAP FEES, POINT FEES, ALLEYS AND INSPECTION FEES FOR A COMPLETE PROJECT. UTILITIES INCLUDE ELECTRICAL, TELEPHONE, WATER AND SEWER
- 7 DRIVEWAY ENTRANCES PER T-RIT REQUIREMENTS

VICINITY MAP

SITE PLAN

C a s h R e c e i p t

Operator ALYSSA DENT

Receipt # 42352 Total \$200.00 Date 02/26/09

Received From JIMMIE WAUFORD

Source of Income AMEX

Account # /Description	Amount	Customer #	Ref #	Check #
01-000-44133-00000	\$200.00	0	0	0
SIGN VARIANCE WELLS FARGO				

## **Council Agenda Item: #R6**

### **SUMMARY:**

Discussion and consideration of approval of a resolution consenting to the assignment of a license agreement for the installation and maintenance of a telecommunications cable under Surveyor Boulevard and approving a related Amendment to License Agreement and authorizing the City Manager to execute the same.

### **FINANCIAL IMPACT:**

None

### **BACKGROUND:**

In June of 2004, the Town granted a license agreement to Barrett, Burke, Wilson, Castle, Daffin & Frappier, L.L.P. (“Barrett”) that allowed Barrett to construct, reconstruct, maintain and operate one four-inch conduit containing both fiber and copper cables located under Surveyor Boulevard. The conduit’s sole purpose was to connect the properties located at 1500 Surveyor Boulevard and 4004 Belt Line Road, Forum II, Suite 100, where Barrett was the tenant, for telecommunication purposes.

Barrett assigned its interest as tenant to National Default Exchange Holdings, L.P. (“National Default”). We have been informed by legal counsel handling this matter for the parties that National Default was once owned by Barrett but was sold in September, 2008, and that Barrett no longer has any control over National Default. With the assignment of its tenancy interest to National Default, Barrett desires to assign its interest in the License Agreement to National Default in accordance with the assignment and assumption of license between the two companies. The license agreement requires that consent by the Town to an assignment of the license is to be evidenced by ordinance or resolution that recites the terms and conditions, if any, upon which consent is given.

The proposed resolution provides for the Town’s consent to the assignment of the license agreement from Barrett to National Default, subject to certain conditions stated in the resolution. One of the conditions to the Town’s consent is that Barrett and National Default execute an amendment to the license agreement (which modifies the indemnity provision of the license agreement). Further, please note that the resolution provides for Barrett to be released from future responsibility under the license agreement...

### **RECOMMENDATION:**

Staff recommends approval of a resolution consenting to the assignment of a license agreement for the installation and maintenance of a telecommunications cable under Surveyor Boulevard, subject to the conditions stated in the resolution, and approval of a related Amendment to License Agreement and authorizing the City Manager to execute the same on behalf of the Town.

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CONSENTING TO THE ASSIGNMENT OF A LICENSE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF A TELECOMMUNICATIONS CABLE UNDER SURVEYOR BOULEVARD; RECITING THE TERMS AND CONDITIONS UPON WHICH CONSENT TO THE ASSIGNMENT IS GIVEN; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on June 8, 2004 the Town of Addison, Texas (the "City") previously entered into an agreement entitled "License Agreement" (and so called herein, a true and correct copy of which is attached hereto as Exhibit A) with Barrett Burke Wilson Castle Daffin & Frappier, L.L.P., a Texas limited liability partnership ("Barrett Burke"), in which the City granted to Barrett Burke a nonexclusive, revocable license to construct, reconstruct, maintain and operate one four (4) inch conduit containing both fiber and copper cable under Surveyor Boulevard for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Boulevard and 4004 Belt Line Road, Forum II, Suite 100, within the City (the "Properties"); and

**WHEREAS**, Barrett Burke, now known as Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership ("Barrett Daffin"), the tenant of the Properties, has assigned its interest as tenant in the Properties to National Default Exchange Holdings, L.P., a Delaware limited partnership ("National Default"); and

**WHEREAS**, having assigned its tenancy interests in the Properties to National Default, Barrett Daffin desires to assign its interest in the License Agreement to National Default in accordance with that Assignment and Assumption of License by and between Barrett Daffin and National Default, a true and correct copy of which is attached hereto as Exhibit B (the "Assignment Agreement"); and

**WHEREAS**, Section 11 of the License Agreement provides that Barrett Burke may assign, transfer, or otherwise convey its rights in the License Agreement with the express prior written consent of the City, which consent is to be evidenced by ordinance or resolution of the City that recites the terms and conditions, if any, upon which the City's consent is given; and

**WHEREAS**, the City desires by this Resolution to consent to the Assignment Agreement, subject to the terms and conditions set forth herein.

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

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



Section 2. Consent to Assignment; Conditions.

A. Subject to the terms, conditions and provisions of this Resolution, the Town of Addison, Texas hereby consents to the assignment of the rights, duties, liabilities, and obligations of Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership (as licensee under the License Agreement) to National Default Exchange Holdings, L.P., a Delaware limited partnership, as set forth in the Assignment and Assumption of License attached hereto as Exhibit B. In consenting to such assignment, the City is relying upon the statements and representations made by Barrett Daffin and by National Default in the Assignment Agreement.

B. This consent is given subject to the following:

A. The City does not waive any of its rights under the License Agreement as to National Default. The City hereby releases Barrett Daffin from its obligations under the License Agreement from and after the effective date and time of the Assignment Agreement; provided, however, that, notwithstanding the foregoing, the City does not release or waive any rights or claims as to any covenants, obligations, liabilities, duties or responsibilities of Barrett Daffin under the License Agreement prior to the said effective date and time of the Assignment Agreement, and Barrett Daffin shall be and remain fully liable and responsible for all of its obligations and duties under the License Agreement and for all of its acts and omissions in connection therewith, related thereto, or which arose or have their inception prior to the effective date and time of the Assignment Agreement.

B. Notwithstanding any provisions of this Resolution or the Assignment Agreement to the contrary, this consent shall not operate as a waiver of any prohibition against further assignment, transfer, or other conveyance of the License Agreement without the City's express prior written consent.

C. The consent shall be effective only upon the execution by the City, Barrett Daffin and National Default of an amendment to the License Agreement in substantially the form and content as set forth in that Amendment to License Agreement attached to this Resolution as Exhibit C (the "Amendment").

D. This consent shall be and remain valid only if and provided that, by no later than 5:00 o'clock p.m. CST on Friday, March 13, 2009, (i) the Assignment Agreement has been executed by both Barrett Daffin and National Default and an original of the same has been delivered to the Town of Addison, Town Hall, 5300 Belt Line Road, Dallas, Texas 75254, (ii) the Amendment has been executed by an authorized representative of Barrett Daffin and National Default, and a fully executed copy of the same has been delivered to the Town of Addison at the same address. Otherwise, this Consent shall be null and void as if it had never been given and executed.

Section 3. Effective Date. This Resolution shall be in effect from and after its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 10th day of March, 2009.

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

ATTEST:

By: \_\_\_\_\_  
Lea Dunn, City Secretary

APPROVED AS TO FORM:

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

**EXHIBIT A- License Agreement**



STATE OF TEXAS §  
COUNTY OF DALLAS §

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License" or "Agreement") is made this 8<sup>th</sup> day of JUNE, 2004, by and between the Town of Addison, Texas ("the City") and Barrett Burke Wilson Castle Daffin & Frappier, L. L. P., a Texas Limited Liability Partnership (the "Company").

WHEREAS, Surveyor Blvd is a public street located within and under the authority and control of the City; and

WHEREAS, the Company leases two properties along Surveyor Blvd., which are generally described as 15000 Surveyor Blvd and 4004 Belt Line, Forum II, Suite 100 (the "Buildings") and which are depicted on EXHIBIT 1 attached hereto and incorporated herein; and

WHEREAS, the Company desires to install under Surveyor Blvd. a telecommunications cable connecting the two Buildings for the purpose of facilitating communication between the two Buildings; and

WHEREAS, Section 70-58 of the City's Code of Ordinances provides, among other things, that all persons that place facilities in, on, or over public rights-of-way must obtain a franchise, license or other authorization as may be required by the City to use the public rights-of-way; and

WHEREAS, the Company desires to place the Cable (as defined herein) under Surveyor Boulevard and has requested the City's issuance of its authorization to construct, maintain, and operate the same.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein and other good and valuable consideration, the City and the Company do hereby contract and agree as follows:

1. Grant of License. The City hereby grants to Company a nonexclusive, revocable license to construct, reconstruct, maintain and operate, subject to the terms and conditions of this Agreement, one four (4) four-inch conduit containing both fiber and copper cable (SEE specifications on EXHIBIT 1 attached hereto and incorporated herein) (the "Cable"), under Surveyor Blvd. for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Blvd. and 4004 Belt Line Rd., Form II, Suite 100, Addison, Texas (together, the "Properties"). The telecommunication services which may be provided between and only between the Properties shall be and are limited to the following: audio, video, data, voice and signalling communications. The Cable shall be located as shown on EXHIBIT 1.

This license, the grant made herein, and the rights of the Company hereunder are subject and subordinate to: (a) the prior and continuing right of the City, its successors and assigns, to use all and any part of Surveyor Blvd., including without limitation the portion of Surveyor Blvd. in which the Cable is located, for any purpose whatsoever in the City's sole discretion; (b) any existing electric, gas, communication, cable, water, sewer, or other utility or drainage facility located in, on, under, or above Surveyor Blvd.; (c) existing rights of any utility, communication, or other person, company, or entity in or to Surveyor Blvd.; (d) any existing franchise, grant, license, lease, easement, or other interest heretofore granted or conveyed by the City; (e) all laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the City, or of any governmental entity or agency



having jurisdiction over Surveyor Blvd. or the use thereof; and (f) all of the terms and conditions of this Agreement.

2. Term. Subject to the terms and conditions of this Agreement, this License shall continue in force for a period of ten (10) years from the date of execution of this Agreement or earlier if terminated as provided hereinafter.

3. Identify Markers. Markers in a form and size satisfactory to the City shall be installed and constantly maintained by Company at the City's property lines or at such locations as the City may designate and shall be relocated or removed by Company upon request of the City. The absence of markers does not constitute a warranty or representation by the City that there are no subsurface installations, lines, cables, or other equipment, materials, or property. The Company shall be responsible for determining and locating all utility or other facilities, equipment or property that may be located in the area in which the Cable will be constructed, operated, and maintained, whether subsurface or otherwise.

4. Cost. As consideration for the license and rights granted herein, Company shall pay the City as follows:

(a) An acceptance fee in the amount of \$1.00 per linear foot of streets bored or traversed, and One Thousand Dollars (\$1,000.00) for each public street crossing, with such payment due on execution of this License; and

(b) An annual payment to the City in the amount of One Thousand and No/100 Dollars (\$1,000.00) payable in advance with the first payment due on execution of this License. Each annual payment thereafter shall be due on or before the anniversary date of this Agreement until the expiration of this License or this License is otherwise terminated as provided herein. Company shall bear the entire cost of construction, reconstructing, maintaining and operating the

Cable, and will not allow or permit any mechanic's, materialman's, or other liens to be enforced against the City's property by reason of any such work, and agrees to and shall indemnify the City against any such liens.

5. Construction and Maintenance. The Cable shall be constructed, reconstructed and maintained in accordance with plans approved by the City. Approval by the City of this Agreement or of such plans shall not constitute a warranty or representation by the City that such plans conform with federal, state and/or local laws, ordinances, rules, codes and regulations applicable thereto. The Company shall comply with all applicable laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the City, or of any governmental entity or agency having jurisdiction over Surveyor Blvd. or the use thereof, including, but not limited to, the securing of building and excavation permits, as necessary or required.

All work upon or in connection with the Cable shall be done to the City's satisfaction at such times and in such manner as not to interfere with or create a hazard to the operation, maintenance, and/or use of any street, roadway, or other right-of-way. In the construction, reconstruction, maintenance, and operation of the Cable, the Company shall keep the Cable and the City's property in a neat and safe condition and in good order and operating condition, failing which, the City may do so at the Company's expense. Upon written notice from the City, by and through the City's Director of Public Works or his designee, stating in general terms how and in what manner maintenance or repair of the Cable or the street or right-of-way in which the Cable is located is required, Company shall perform such maintenance or repair; if Company fails to do so, the City shall have the right (in addition to any other rights of the City provided for herein or at law, in equity, or otherwise) to perform such maintenance or repair, the cost of which shall be



borne by the Company. If required by the City in its use of the City's property, Company, at its sole cost, shall reconstruct, relocate or alter the Cable. In the event that the Company has not relocated the Cable as directed by the City's Director of Public Works within a reasonable length of time (as determined by the Director of Public Works), the City shall have the right, without liability to the Company, to relocate, cause to be relocated, or remove the Cable, and the Company shall reimburse the City for all costs of relocation or removal. Except in an emergency, Company shall give the City at least five (5) days written notice, or such longer time as may be required by the City in any ordinance, rule, regulation, standard, code, or policy of the City, of the day and hour it proposes to do any work on the Cable. Company shall bear responsibility for timely and complete repairs in the event of damage to the Cable from any cause whatsoever.

Company shall cooperate with the City in making any test the City requires of any installation or condition which, in its judgment, may have an adverse effect on any of the facilities of the City. All costs incurred by the test, or any corrections thereof, shall be borne by Company.

6. Miscellaneous Obligations of Company.

A. Company shall maintain a complete set of "as built" plans of the Cable and shall furnish copies of the same to the City.

B. Company shall maintain a local agent who is familiar with the Cable and whose name and address shall be furnished at least annually to the City. The local agent shall be responsible for satisfying all information needs of the City.

7. Indemnification; Insurance.

A. (1) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE COMPANY'S PERFORMANCE OF THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(2) WITH RESPECT TO THE COMPANY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (1), COMPANY SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(3) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE



COMPANY AND THE INDEMNITEE, THE COMPANY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION A. WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY.

(4) WITH RESPECT TO THE COMPANY'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION A., THE COMPANY SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED HOWEVER, THAT THE CITY SHALL HAVE THE RIGHT TO APPROVE THE SELECTION OF COUNSEL BY THE COMPANY AND TO REJECT THE COMPANY'S SELECTION OF COUNSEL AND TO SELECT COUNSEL OF THE CITY'S OWN CHOOSING, IN WHICH INSTANCE, THE COMPANY SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND THE EXPENSES ASSOCIATED THERETO. THE CITY AGREES THAT IT WILL NOT UNREASONABLY WITHHOLD APPROVAL OF COUNSEL SELECTED BY COMPANY, AND FURTHER, THE CITY AGREES TO ACT REASONABLY IN THE SELECTION OF COUNSEL OF ITS OWN CHOOSING.

(5) IN THE EVENT THAT THE COMPANY FAILS OR REFUSES TO PROVIDE A DEFENSE TO ANY CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE CITY SHALL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION, THROUGH COUNSEL OF ITS OWN CHOICE, ON BEHALF OF AND FOR THE ACCOUNT OF, AND AT THE

RISK OF THE COMPANY, AND THE COMPANY SHALL BE OBLIGATED TO PAY THE REASONABLE AND NECESSARY COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED BY THE CITY IN CONNECTION WITH HANDLING THE PROSECUTION OR DEFENSE AND ANY APPEAL(S) RELATED TO SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION.

(6) THE PROVISIONS OF THIS SECTION 7.A. SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

B. The Company shall provide and maintain the minimum insurance coverages set forth below during the term hereof:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

2. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

3. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.



4. Builders Risk coverage as follows:

(a) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.

(b) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.

Any contractor(s) hired by the Company to perform work pursuant to or in connection with this Agreement shall maintain insurance coverage equal to that required of the Company. It is the responsibility of the Company to assure compliance with this provision.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form comprehensive general liability endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, Company shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of The Town of Addison shall be contained in the Workers Compensation, Builders Risk, and all liability policies.

4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.

5. All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.

6. All insurance policies, which name The Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. Company may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to the City simultaneously with the execution of this License, and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Company shall furnish the Town of Addison with certified copies of all insurance policies.

8. Termination. Prior to the expiration of the term of this License Agreement, this Agreement shall terminate upon:

- A. abandonment of the Cable or discontinuance of use thereof;
- B. failure of Company to correct any default hereunder promptly after receipt of notice from the City;
- C. upon thirty (30) days' written notice by the City to Company; or
- D. upon thirty (30) days' written notice by Company to the City.

Upon the expiration or termination of this Agreement, the Company shall remove the Cable and restore the premises to the City's satisfaction, failing which the City may arrange to do so at Company's expense.

9. Notice. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered upon hand-delivery or upon three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

To the City:

5300 Belt Line Road  
Dallas, TX 75254

Attn: Director of Public Works

To the Company:

15000 Surveyor Blvd.  
Addison, Texas

Attn: Mr. Barry Tiedt

10. Applicable Law; Venue. In the event of any action under this Agreement, venue for all causes of action 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 Agreement; and, with respect to any conflict of law provisions, the parties



agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

11. Assignment. The rights granted by this Agreement shall not be assigned, transferred, or otherwise conveyed by the Company without the express prior written consent of the City. Any required consent is to be evidenced by an ordinance or resolution of the City that fully recites the terms and conditions, if any, upon which consent is given.

12. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Company relative to the Cable as described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.

13. Amendment. This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and the Company.

14. No Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity, except as may be provided for herein.

15. Non-Waiver; Rights Cumulative. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law, in equity, or otherwise.

16. Survival. Any rights and remedies either party may have with respect to the other arising out of the performance of or in connection with this Agreement shall survive the expiration or termination of this Agreement.

17. Relationship. The parties hereto have the relationship only of licensor and licensee, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties.

18. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect.

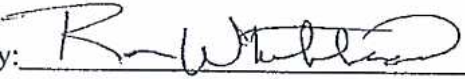
19. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.


20. 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 Agreement 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.

IN WITNESS WHEREOF, the City and the Company have executed this License Agreement on the day and year first set forth above.

TOWN OF ADDISON, TEXAS


BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L. L. P.

By:   
Ron Whitehead, City Manager

By:   
Barry Tiedt, Chief Financial Officer

Its: Chief Financial Officer

ATTEST:

By:   
Carmen Moran, City Secretary

**EXHIBIT B-Assignment Agreement**



## ASSIGNMENT AND ASSUMPTION OF LICENSE

THIS ASSIGNMENT AND ASSUMPTION OF LICENSE (this "Assignment") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, a Texas limited liability partnership (f/k/a Barrett Burke Wilson Castle Daffin & Frappier, LLP), its successors and assigns ("Assignor") and NATIONAL DEFAULT EXCHANGE HOLDINGS, L.P., a Delaware limited partnership ("Assignee").

### RECITALS:

- A. The Town of Addison, Texas granted a license to Assignor pursuant to that certain License Agreement dated June 8, 2004 (the "License"), attached hereto as Exhibit A.
- B. The License allows for Assignor to install, maintain and operate a telecommunications cable (as further described in the License) under Surveyor Blvd. connecting two properties along Surveyor Blvd., which are generally described as 15000 Surveyor Blvd. and 4004 Belt Line, Forum II, Suite 100, as depicted on Exhibit 1 attached to the License (the "Property").
- C. Assignor previously assigned its interest, as tenant, in the leases affecting the Property to Assignee. Assignor now desires to assign all of its right, title and interest in and to the License to Assignee, and Assignee wishes to assume all of Assignor's right, title and interest in the License, specifically acknowledging that it is subject to the terms, restrictions and conditions contained in the License.
- D. Pursuant to Section 11 of the License, Assignor has obtained the prior written consent of the Director of Public Works of the Town of Addison for such assignment.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the provisions, covenants and agreements hereinafter set forth, it is agreed as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee all of Assignor's right, title and interest in and to the License.
2. Assignee hereby accepts the assignment of the License and agrees to assume, discharge and be bound by, in accordance with the terms of the License, all of Assignor's duties and obligations under the License, specifically acknowledging that it is subject to the terms, restrictions and conditions contained in the License.
3. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform any of the foregoing obligations assumed by Assignee hereunder to the extent accruing and applicable to the period of time occurring from and after the Effective Date.
4. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the foregoing obligations assumed by Assignee hereunder to the extent accruing and applicable to the period of time occurring prior to the Effective Date.



5. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

*[Signature Pages Immediately Follow.]*

**SIGNATURE PAGE FOR  
ASSIGNMENT AND ASSUMPTION  
OF LICENSE**

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed effective as of the Effective Date.

**ASSIGNOR:**

**BARRETT DAFFIN FRAPPIER TURNER  
& ENGEL, LLP,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, \_\_\_\_\_ of BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, a \_\_\_\_\_ limited liability partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

**SIGNATURE PAGE FOR  
ASSIGNMENT AND ASSUMPTION  
OF LICENSE**

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed effective as of  
the Effective Date.

**ASSIGNEE:**

**NATIONAL DEFAULT EXCHANGE HOLDINGS, L.P.,**  
a Delaware limited partnership

By: National Default Exchange Management, Inc.,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by  
\_\_\_\_\_, \_\_\_\_\_ of NATIONAL DEFAULT EXCHANGE  
MANAGEMENT, INC., as general partner of NATIONAL DEFAULT EXCHANGE HOLDINGS, L.P.,  
a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing  
instrument, and acknowledged to me that he executed the same for the purposes and consideration therein  
expressed, in the capacity therein stated and as the act and deed of said limited partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

**EXHIBIT C-Amendment to License Agreement**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**AMENDMENT TO LICENSE AGREEMENT**

This Amendment to License Agreement (the “Amendment”) is entered into this \_\_\_\_ day of March, 2009 by and between the Town of Addison, Texas (the “City”), and Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership (“Barrett Daffin”), and National Default Exchange Holdings, L.P., a Delaware limited partnership (“National Default”).

Recitals:

1. On June 8, 2004 the City entered into an agreement entitled “License Agreement” (and so called herein, a true and correct copy of which is attached hereto as Exhibit A) with Barrett Daffin (formerly known as Barrett Burke Wilson Castle Daffin & Frappier, L.L.P., a Texas limited liability partnership), in which the City granted to Barrett Daffin a nonexclusive, revocable license to construct, reconstruct, maintain and operate one four (4) inch conduit containing both fiber and copper cable under Surveyor Boulevard for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Boulevard and 4004 Belt Line Road, Forum II, Suite 100, within the City (the “Properties”).

2. Barrett Daffin has assigned its interest as tenant in the Properties to National Default, and in connection therewith desired to assign its interest in the License Agreement to National Default pursuant to that Assignment and Assumption of License by and between Barrett Daffin and National Default, a true and correct copy of which is attached hereto as Exhibit B (the “Assignment Agreement”).

3. Pursuant to Section 11 of the License Agreement, Barrett Daffin was required to obtain the express prior written consent of the City to the assignment of the License Agreement as evidenced by an ordinance or resolution of the City that recites any terms and conditions upon which the consent is given. In accordance with the said Section 11, on March 10, 2009 the City Council of the City adopted Resolution No. \_\_\_\_\_ setting forth the City’s consent to the assignment and the terms and conditions upon which such consent was given. One condition upon which consent was given was that the License Agreement be amended by amending Section 7, subsection A. regarding indemnity. In accordance therewith, the City, Barrett Daffin, and National Default do hereby enter into this Amendment.

**NOW, THEREFORE**, for and in consideration of the above and foregoing Recitals, the sum of Ten and No/100 Dollars, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Town of Addison, Texas, Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership, and National Default Exchange Holdings, L.P., a Delaware limited partnership (Barrett Daffin and National Default are herein referred to as the “Licensee”) do hereby contract and agree as follows:

Section 1. Amendment. The License Agreement is hereby amended by amending Section 7., subsection A. in its entirety so that it shall read as follows:



**A. LICENSEE'S INDEMNITY OBLIGATION.** Licensee covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Licensor), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Town of Addison, Texas and/or any other Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) any repair to or construction, reconstruction, maintenance (or lack thereof), operation or use of, the Cable by Licensee, its owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, tenants, subtenants, licensees, sublicensees, concessionaires, or any other person or entity for whom Licensee is legally responsible, and their respective owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, and concessionaires (collectively, "Licensee Persons"), (ii) any representations and/or warranties by Licensee under this Agreement, and/or (iii) any act or omission under, in performance of, or in connection with this Agreement by Licensee or by any of the Licensee Persons. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Licensee's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Licensee's liability for Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Licensee shall promptly advise Licensor in writing of any claim or demand against any Addison Person related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and own expense, to participate in such defense without relieving Licensee of any of its obligations hereunder. The defense, indemnity, and hold harmless obligations set forth herein shall survive the expiration or termination of this Agreement.

Section 2. No Other Amendments. Except to the extent modified or amended herein, all other terms, conditions, and provisions of the License Agreement shall remain unchanged and in full force and effect.

Section 3. 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.

**IN WITNESS WHEREOF**, the undersigned parties execute this Amendment this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**TOWN OF ADDISON, TEXAS**

**LICENSEE:**

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

BARRETT DAFFIN FRAPPIER TURNER &  
ENGEL, LLP

ATTEST:

By: \_\_\_\_\_  
Lea Dunn, City Secretary

By: \_\_\_\_\_  
Typed/printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

NATIONAL DEFAULT EXCHANGE  
HOLDINGS, L.P., a Delaware limited  
partnership

By: \_\_\_\_\_  
Typed/printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Council Agenda Item: #R7**

**SUMMARY:**

This item is to award Bid NO 09-06 to Durable Specialties, Inc. in the amount of \$367,900 to install traffic signal equipment as part of the Town Wide Signal Upgrade Project.

**FINANCIAL IMPACT:**

Budgeted Amount:	NCTCOG Project	Federal Participation	\$465,130
		RTR Funds	\$324,000
		Local Participation	<u>\$155,050</u>
			\$944,180
	Dallas County Project (upgrade signals on Midway road only)		
		Dallas County Participation	\$196,000
		Local Participation	<u>\$196,000</u>
			\$392,000
	Total Signalization Project		<u>\$1,336,180</u>

The Town’s local share of \$351,050 is available in the Street Capital Project Fund. The additional amount will be funded by the other participating agencies.

Project Manager: Nancy Cline

**BACKGROUND:**

The complete project includes upgrading traffic signal controllers (new equipment) progression timing, video detection, and the creation of a traffic signal communication system. These upgrades will standardize our traffic signal system hardware, allow for remote management of traffic signal operations from a central control center, and update all traffic signal timing plans.

This project began in 2002 with the Town’s request for funding from Dallas County, the Federal Government through TXDOT, and DART LAP funds. Dallas County would contribute \$196,000 with a \$196,000 match of Town funds, the Federal Government, through TXDOT, would contribute \$465,129 with a Town match of \$155,043. The Town’s \$196,000 match was to come from a transfer of funds from the Town’s Railroad Quiet Zone project and the \$155,043 match was to come from then existing DART LAP funds. The total project cost was to be \$1,012,172. Since then, the Town was successful in acquiring \$324,000 in Regional Toll Revenue funds that bring the new total amount to \$1,336,172.

The project was delayed until the funding could be obtained to add equipment bringing video feed to a central control center at the Addison Service Center. In order to expedite the project, obtain specific equipment, and utilize available discounts Public Works has divided aspects of the project accordingly. The installation of all traffic signal equipment is represented in this agenda item.



Prior to bid opening on February 27, 2009 this project was advertised twice in the Dallas Morning News, placed on Demandstar, and Bidsync. Two contractors submitted bids (see attached bid tabulation). The low bid (\$367,900) was submitted by Durable Specialties, Inc.

This agenda item constructs the traffic signal system upgrade project with equipment purchases approved by Council on the February 24<sup>th</sup>.

**RECOMMENDATION:**

Staff recommends awarding this contract in the amount of \$367,900 for the installation of traffic signal equipment for the Town Wide Signal Upgrade Project to Durable Specialties, Inc.

**Traffic Signalization**

**BID NO 09-06**

**DUE: February 27, 2009**

**2:00 PM**

<b>BIDDER</b>	<b>Signed</b>	<b>Bid Bond</b>	<b>Bid Total</b>
Florida Traffic Control Devices, Inc	Y	Y	\$ 620,746.26
Durable Specialties, Inc.	Y	Y	\$ 367,900.00

*Matthew E. McCombs*

\_\_\_\_\_  
Matt McCombs, Management Analyst

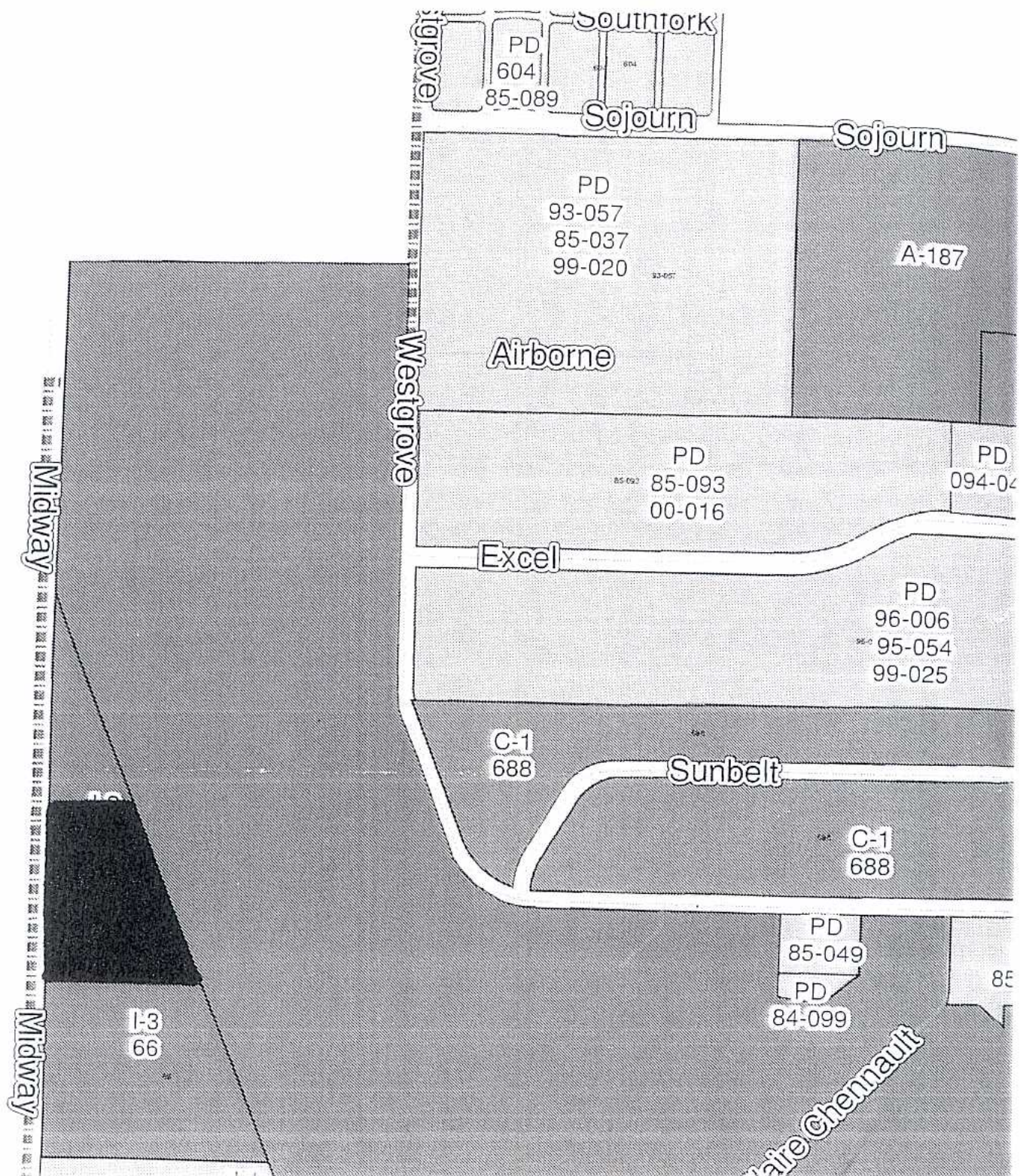
*Whitney Traylor*

\_\_\_\_\_  
Witness

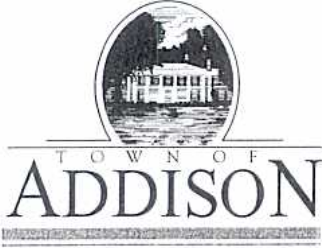


# REPLAT/Lot 2, Block A, Beltwood North – Airport Addition

REPLAT/Lot 2, Block A, Beltwood North – Airport Addition. Requesting approval of a replat of one lot of 5.642 acres, located in an Industrial-3 zoning district, on the east side of Midway Road, between Kellway Drive and Commander Drive (in Carrollton), on application from S&B Investments, represented by Mr. Robert Wright of Pate Engineers.







February 19, 2009

STAFF REPORT

RE: REPLAT/Lot 2, Block A,  
Beltwood North – Airport Addition

LOCATION: One lot of 5.642 acres in an  
Industrial-3 zoning district, on the  
east side of Midway Road,  
between Kellway Drive and  
Commander Drive (in Carrollton)

REQUEST: Approval of a replat

APPLICANT: S&B Investments, represented by  
Mr. Robert Wright of Pate  
Engineers

DISCUSSION:

Background. This property is owned by S&B Investments, which also owns the adjacent building to the south which houses the Maxi-Lift Corporation. Maxi-Lift currently occupies most of its existing building, but has a tenant in one portion. At this point, Maxi-Lift wants to expand in its existing building, and move its tenant into the new building that it wants to construct on this site. The new building will be an allowed use in an existing zoning district, and will not require any zoning approval.

Public Works Review. The Public Works Department has reviewed the proposed final plat, and recommends the following changes and corrections.

1. Provide a drainage easement for Line 'A' as it accepts off-site drainage.
2. Label P.O.B.
3. Provide a reference distance from the proposed 10' water easement to a property corner.
4. Line Table – L4 and L19 must be the same bearing as property line.
5. Town does not require fire lane easements. Change fire lane easement to mutual access easement.
6. Is Volume 95041, Page 1058 a mutual access easement on Lot 3? Show bearings and distances for this existing easement so that its connection with the on-site easement can be confirmed.



7. Confirm if there's a gap between the off-site water easement and the north boundary. If so please indicate the distance. Please note that if a gap does exist between the north property line and the easement, an offsite easement will be necessary for this construction.
8. Extend proposed water easements on the plat around all meters, fire hydrants and the double check detector assembly for the fire service.
9. The location of the municipal boundary between Addison and Carrollton is incorrect. Please correct as required.
10. Specify to abandon the building line by this plat.
11. Indicate the site location in the Vicinity Map.
12. Label the water easement along Midway Road.
13. Provide a closure sheet.

RECOMMENDATION:

Staff recommends approval of the replat for Lot 2, Block A, Beltwood North – Airport Addition, subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on February 26, 2009, voted to recommend approval of the replat for Lot 2, Block A, Beltwood North – Airport Addition, subject to the following conditions:

1. Provide a drainage easement for Line 'A' as it accepts off-site drainage.
2. Label P.O.B.
3. Provide a reference distance from the proposed 10' water easement to a property corner.
4. Line Table – L4 and L19 must be the same bearing as property line.
5. Town does not require fire lane easements. Change fire lane easement to mutual access easement.
6. Is Volume 95041, Page 1058 a mutual access easement on Lot 3? Show bearings and distances for this existing easement so that its connection with the on-site easement can be confirmed.
7. Confirm if there's a gap between the off-site water easement and the north boundary. If so please indicate the distance. Please note that if a gap does exist between the north property line and the easement, an offsite easement will be necessary for this construction.
8. Extend proposed water easements on the plat around all meters, fire hydrants and the double check detector assembly for the fire service.
9. The location of the municipal boundary between Addison and Carrollton is incorrect. Please correct as required.
10. Specify to abandon the building line by this plat.
11. Indicate the site location in the Vicinity Map.
12. Label the water easement along Midway Road.
13. Provide a closure sheet.

Voting Aye: Bernstein, Doherty, Gaines, Hewitt, Jandura, Wood

Voting Nay: none

Absent: none, one seat vacant



**PUBLIC WORKS DEPARTMENT**  
Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871 FAX (972) 450-2837  
16801 Westgrove

# Memorandum

**To:** Carmen Moran  
**CC:** Nancy Cline  
**From:** Clay Barnett  
**Date:** 2/19/2009  
**Re:** Replat of Lot 2, Block A Beltwood North – Airport Addition

---

1. Provide a drainage easement for Line 'A' as it accepts off-site drainage.
2. Label P.O.B.
3. Provide a reference distance from the proposed 10' water easement to a property corner.
4. Line Table – L4 and L19 must be the same bearing as property line.
5. Town does not require fire lane easements. Change fire lane easement to mutual access easement.
6. Is Volume 95041, Page 1058 a mutual access easement on Lot 3? Show bearings and distances for this existing easement so that its connection with the on-site easement can be confirmed.
7. Confirm if there's a gap between the off-site water easement and the north boundary. If so please indicate the distance. Please note that if a gap does exist between the north property line and the easement, an offsite easement will be necessary for this construction.
8. Extend proposed water easements on the plat around all meters, fire hydrants and the double check detector assembly for the fire service.
9. The location of the municipal boundary between Addison and Carrollton is incorrect. Please correct as required.
10. Specify to abandon the building line by this plat.
11. Indicate the site location in the Vicinity Map.
12. Label the water easement along Midway Road.
13. Provide a closure sheet.

Council Agenda Item **#ES1**

There are no attachments for this Item.



Council Agenda Item **#ES2**

There are no attachments for this Item.