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

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AND / OR

WORK SESSION OF THE CITY COUNCIL

6:00 PM

NOVEMBER 23, 2010

TOWN HALL

ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254
STARTING TIMES: WORK SESSION 6:00PM REGULAR MEETING 7:30PM

WORK SESSION

Item #WS1 -	Presentation and discussion regarding an update on the Texas Municipal Retirement System (TMRS).
Item #WS2 -	Discussion regarding processes for the sale of beer and wine for off-premises consumption. Attachment(s): 1. Distance Provisions - Alcoholic Beverages

REGULAR MEETING

Pledge of Allegiance

Item #R1-	Consideration of Old Business Introduction of Employees Discussion of Events/Meetings
Item #R2-	Consent Agenda.
#2a-	Approval of Minutes for: 11/9/2010 Regular Meeting and Work Session 11/10/2010 Special Meeting and Work Session
#2b-	Approval of an Ordinance amending the Town of Addison Employee Handbook by adding provisions thereto regarding social media.
#2c-	Approval of an agreement with Liz Oliphant & Associates, Inc. to assist with proactive media development and placement services as determined by the City Manager's Office.
#2d-	Approval of an agreement with The Margulies Communication Group to assist the Town with media communications.
#2e-	Approval of the annual renewal of the contract for professional services with Rodney Hand for production of the *Addison Magazine*.

Item #R3 -	Presentation, discussion and consideration of approval of an ordinance providing for increased prior and current service annuities for retirees and beneficiaries of deceased retirees of the Town of Addison, and establishing an effective date for the ordinance. Attachment(s): 1. TMRS Letter 2. TMRS Ordinance Recommendation: Staff recommends approval.
Item #R4 -	Presentation, discussion and consideration of approval to enter into an agreement with Shiroma Southwest to provide professional services for public relations and media publicity programs to promote certain special events and special projects for the Town of Addison. Attachment(s): 1. Shiroma Agreement Recommendation: Staff recommends approval.
Item #R5 -	Presentation, discussion and consideration of approval authorizing the City Manager to renew the Town's health insurance contract with Blue Cross/Blue Shield of Texas (BCBSTX). Recommendation: Staff recommends approval.
Item #R6	Presentation, discussion and consideration of approval of

- the assignment of the tenant's interest in a lease between the Town of Addison as landlord, and Twin City Hotel, LLC, as tenant, and a related option contract, to Praveen Katapally and/or assigns, regarding property located at 4460 Belt Line Road (Clay Pit Restaurant).

Attachment(s):

1. Clay Pit Assignment
2. Amendment to Current Lease w/Lease
3. Option Contract

Item #R7 - Presentation, discussion and consideration of approval of a resolution of the Town of Addison authorizing the Cities Aggregation Power Project, Inc. (CAPP) to negotiate an extension (to continue until December 31, 2018) to the current electric supply and necessary related services agreement with Next Era for a fixed price per kwh that is lower than contract rates for 2011-2013; approving CAPP contracting with Next Era and authorizing the Town's execution of a contract with CAPP for the Town's electricity needs for the period beginning approximately January 1, 2011 and extending up to December 31, 2018; committing to budget for energy purchases and to honor the Town's commitments to purchase power through CAPP for its electrical needs through December 31, 2018.

Attachment(s):

1. CAPP Resolution

Recommendation:

Staff recommends approval.

Item #R8 Presentation, discussion and consideration of approval of

- ordinances to re-appoint Larry Dwight as presiding municipal judge, and U.H. (Woody) Specht and Albert Fenton as alternate municipal judges, to the Addison Municipal Court of Record, and of agreements for services with each of the said judges.

Attachment(s):

1. Ordinance for Judge Dwight
2. Agreement for Judge Dwight
3. Ordinance for Judge Specht
4. Judge Specht Agreement
5. Ordinance for Judge Fenton
6. Agreement for Judge Fenton

Recommendation:

Staff recommends approval.

Item #R9 - Presentation, discussion and consideration of approval of the purchase of furniture from III Office Resource Group in an amount not to exceed $40,000.

Attachment(s):

1. Office Furniture Quote Sheet
2. Furniture Location Diagram

Recommendation:

Staff reccomends approval

Item #R10 - Presentation , discussion and approval to pursue street and utility easement agreements from all individual property owners on Lake Forest in order to allow for rehabilitation of Lake Forest Drive.

Attachment(s):

1. Lake Forest Letter
2. Easement
3. Pictures

Item #R11 - Presentation, discussion and consideration of approval of an Economic Development Program Grant Agreement between the Town of Addison and Keller Properties, L.P., owner of the Addison Arbor, Office in the Park, located along the west side of Midway Road and approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive, regarding the repair and reconstruction of the building formerly known as Dovie's located within the Addison Arbor property.

Attachment(s):

1. Economic Development Program Grant Agreement
2. Economic Incentive Summary

Item #R12 - Presentation of the Quarterly Financial Report for the period ending September 30, 2010.

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other

	incentive to such business prospect or business prospects.
Item #R13 -	Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

Adjourn Meeting

Posted:
11/19/2010, 5PM, Lea Dunn

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

AGENDA CAPTION:

Presentation and discussion regarding an update on the Texas Municipal Retirement System (TMRS).

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
No Attachments Available	

Council Agenda Item: #WS2

AGENDA CAPTION:

Discussion regarding processes for the sale of beer and wine for off-premises consumption.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Distance Provisions - Alcoholic Beverages	Backup Material

COWLES & THOMPSON

MEMORANDUM

TO: **Lea Dunn, Carmen Moran**

FROM: **John Hill**

RE: **Distance Provisions for Sale of Alcoholic Beverages**

DATE: **November 17, 2010**

Chapter 109 of the Alcoholic Beverage Code includes provisions that allow a city to adopt distance restrictions between a place that sells alcoholic beverages and a school (public or private), a church, a public hospital, and a day care center or child care facility.

Under that Chapter, a city may, subject to certain restrictions, enact regulations that prohibit the sale of alcoholic beverages by a dealer whose place of business is within:

(1) 300 feet of a church, public or private school, public hospital, or day-care center or child-care facility;

(2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code; or

(3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.

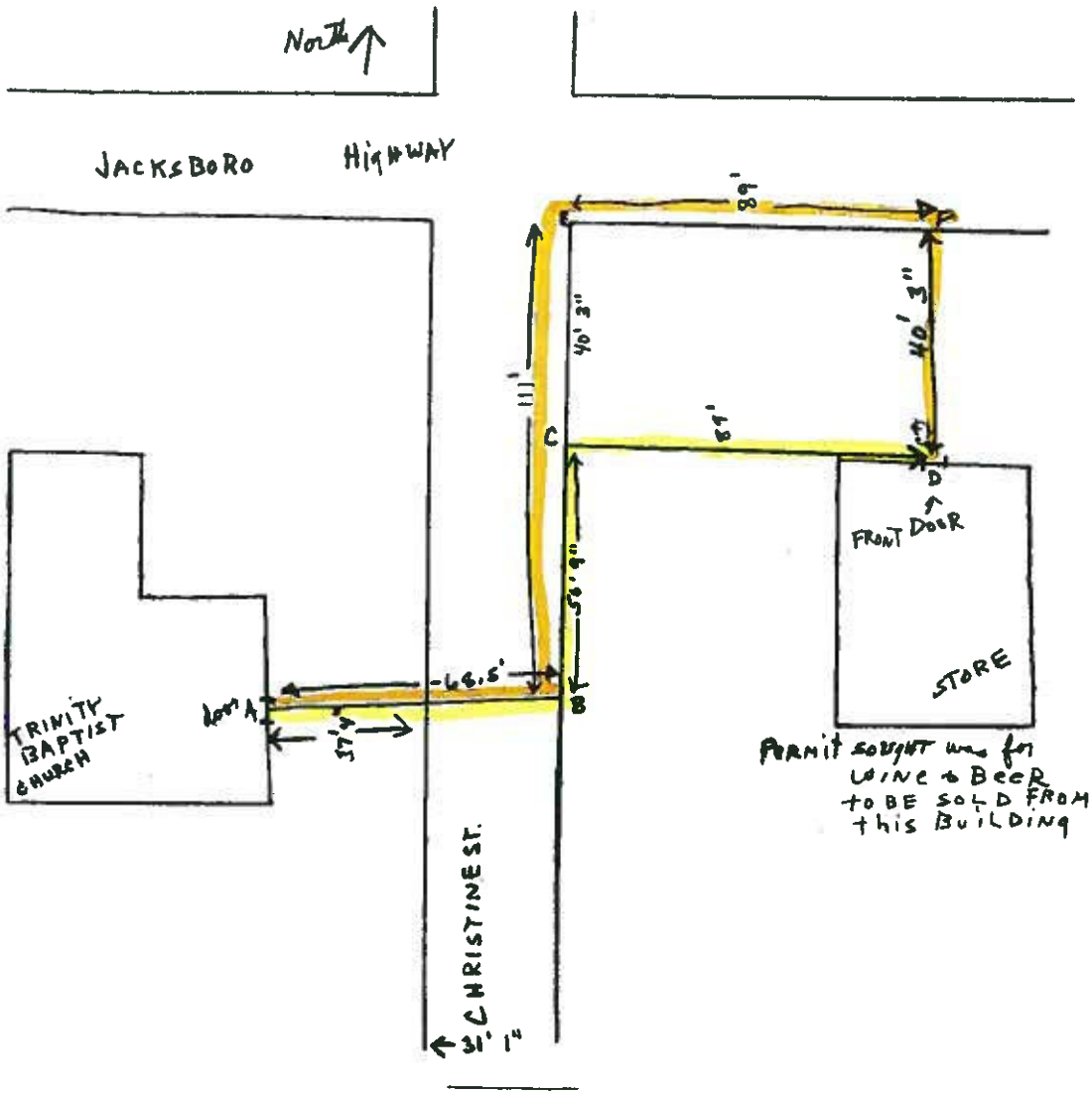
§109.33(a)(1); §109.331(b).

The distances between the location where alcoholic beverages are sold and a school, church, public hospital, and day-care center are measured as follows:

<u>Church or Public Hospital</u>

The distance between a place where alcoholic beverages are sold and a church or public hospital, are measured "along the property lines of the street fronts and from front door to front door, and in direct line across intersections." §109.33(b).

In a 1975 decision of the Ft. Worth Court of Appeals, the court construed how to measure the distance between a place that sold alcoholic beverages and a church. *Ezell v. Tex. Alcohol Bev. Comm'n*, 528 S.W.2d 888 (Tex. Civ. App. –Ft. Worth 1975, no writ). In its opinion, the court included a diagram showing how the distance could be measured, and it is below:



In the case, the licensee proposed that the distance should be measured as shown by the orange line - from the front door of the church to a point directly across the street (Point A to Point B), then from Point B to the corner of the intersection (Point E), then turn the corner and go to a point along the street frontage immediately opposite the front door of the store (Point F), then to the front door of the store (Point G), with a total distance exceeding 1000 feet. However, the Alcoholic Beverage Commission proposed that the distance be measured from the front door of the church to the point directly across the street (Point A to Point B), then north to the point (Point C) that was nearest to the front door of the store, then from that point to the front door (Point C to Point D), which resulted in a distance of less than 300 feet. The court agreed with the Alcoholic Beverage Commission.

<u>Public or Private School; Day-Care Center or Child-Care Facility</u>

The distance between a place where alcoholic beverages are sold and a public or private school, or a day-care center or child-care facility, are measured:

(1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

§109.33(b); §109.331(b).

Note that with a school (as opposed to a church or public hospital), there is no "door" element; rather, the measurement is from the closest property line to closest property line.

Other Limitations

Private Schools

300 foot rule

The 300 foot rule does not apply to private schools in the case of a holder of:

(1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 300 feet of a private school.

§109.33(h).

1000 foot rule

If the distance limitation is increased for a private school to 1,000 feet in accordance with Section 109.33(a)(3), the following are exempted from the 1000 foot rule:

(1) the holder of a temporary and special wine and beer retailer's permit (Chapter 27), caterer's permit (Chapter 31), or temporary license for the sale of beer at picnics, celebrations, or similar events (Chapter 72) who is operating on the premises of a private school; or

(2) the holder of a license or permit for a package store that is located within 1,000 feet of a private school.

§109.33(g).

Public Schools and Private Schools - 1000 foot rule

If the distance limitation is increased for a public school or a private school to 1,000 feet in accordance with Section 109.33(a)(2) or (a)(3), the following are exempted from the 1000 foot rule:

(1) a holder of a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;

(2) a holder of a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or

(3) a holder of a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102 of the Alcoholic Beverage Code.

§109.33(f).

Day-Care Center or Child Care Facility

A "day-care center" is defined in Section 42.002(7) of the Texas Human Resources Code as:

a child-care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

A "child care facility" is:

a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

Tex. Hum. Res. Code Ann. §42.002(3).

The 300 foot distance restriction, if adopted, applies only to the following if they do not hold a food and beverage certificate:

- a permit or license holder of a Wine and Beer Retailer's Permit under Chapter 25
- a Mixed Beverage Permit under Chapter 28
- a Private Club Registration Permit under Chapter 32
- a Retail Dealer's On Premise License under Chapter 69
- a Brewpub License under Chapter 74.

§109.331(a).

The 300 foot rule cannot be made to apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by Section 42.002, Human Resources Code.

Council Agenda Item: #R 2a

AGENDA CAPTION:

Approval of Minutes for:

11/9/2010 Regular Meeting and Work Session

11/10/2010 Special Meeting and Work Session

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
11/09/2010 Minutes for Regular Meeting	Backup Material
11/10/2010 Minutes for Special Meeting	Backup Material

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
WORK SESSION

November 9, 2010
6:00 PM - Town Hall
Addison Town Hall, 5300 Belt Line, Dallas, TX 75254
Starting Times: Work Session 6:00PM, Regular Meeting 7:30PM.
Work Session Item #2 Was Reconvened After the Regular City Council Meeting
.
Upstairs Conference Room

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

Work Session

Item #WS1 - Discussion regarding the Town's participation in the restoration and renovation of the Audie Murphy House located in The Arbors complex at 14671 Midway Road, Addison, TX 75001.

There was no action taken.

Item #WS2 - Discussion regarding the Police Department and Fire Department ICMA study recommendations.

Work Session Item #2 Was Reconvened After the Regular City Council Meeting.

There was no action taken.

_____
Mayor-Joe Chow

Attest:

_____
City Secretary-Lea Dunn

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR MEETING

November 9, 2010
6:00 PM - Town Hall
Addison Town Hall, 5300 Belt Line, Dallas, TX 75254
Starting Times: Work Session 6:00PM, Regular Meeting 7:30PM.
Work Session Item #2 Was Reconvened After the Regular City Council Meeting.
11/5/2010, 5PM, Lea Dunn

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Consideration of Old Business

The following employees were introduced:

Ross Krueger with the Police Department and Rick Johnson with the Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for: 10/26/2010 Regular City Council Meeting

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2b - Approval of an ordinance amending the Town's financial policies set forth in Chapter 2, Article IV, Division 2 of the Town's Code of Ordinances.

This Item was pulled by the Mayor for clarification and to change Sec. 2-176. Revenues. (c) to read as follows:

"The Town may consider providing tax abatements or other incentives to encourage economic development."

Ordinance 010-038 was approved.

A motion to Approve w/ Conditions was made by Mayor Joe Chow.
The motion was seconded by Councilmember Blake Clemens.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2c - Approval of (i) Contracts for Services between the Town of Addison and the following non-profit agencies: Metrocrest Family Medical Clinic, Metrocrest Chamber of Commerce, The Family Place, Communities in Schools, Senior Adult Services, Metrocrest Social Services, CONTACT Crisis Line, Launchability, United Basketball League - Texas Wranglers, Dance Council, WaterTower Theatre, Richardson Symphony Orchestra, and Second Thought Theatre, and (ii) an Agreement for the Use of the Addison Theatre Centre between the Town of Addison and each of Water Tower Theatre and Second Thought Theatre. The agencies and the amounts were approved by the City Council and included in the adopted FY 2010-11 budget.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2d - Approval of an agreement for professional services with Waters-Oldani Executive Recruitment of The Waters Consulting Group, Inc. to conduct a recruitment process leading to the hiring of an Economic Development Director for the Town of Addison.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

#2e - Approval of a marketing sponsorship for $50,000.00 for the Cavanaugh Flight Museum (CFM) for their 2011 marketing program.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R3 - Presentation, discussion and consideration of approval of appointment of members to the Board of Zoning Adjustment.

The following appointments were made to the Board of Zoning Adjustment:

Mayor Chow - Steve Blum
Council Member Lay- Audrey Yazbeck
Council Member Resnik - Traci Hetherington

Appointments were approved as submitted.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R4 - Presentation and discussion regarding setting up a Marketing Committee.

Mayor Chow made the following appointments to the Marketing Committee:

Council Member Noble
Council Member Resnik
Council Member Mellow

Item #R5 - Presentation, discussion and approval of a second amendment to the Master Facilities Agreement between the Town of Addison, UDR, Inc. and various property owners regarding public infrastructure improvements in the Vitruvian Park area.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Blake Clemens.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R6 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 4 with North Texas Contracting, Inc., in the amount of $217,812.30 and an extension of thirty-five (35) calendar days for the construction of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1C).

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R7 - PUBLIC HEARING Case 1608-SUP/7-11 Convenience Stores. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for a convenience store in a Planned Development district #001-002, located at 4900 Belt Line Road, Suite 125, on application from Mr. Michael Dee, represented by Ms. Larae Tucker of Harrison French and Associates.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on October 28, 2010, voted to recommend approval of a Special Use Permit for a convenience store, subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 010-039 was approved.

A motion to Approve was made by Councilmember Don Daseke.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: Clemens

Item #R8 - PUBLIC HEARING Case 1609-SUP/Schlotzsky's Sandwiches. Presentation, discussion and consideration of approval of an ordinance amending an existing Special Use Permit for a restaurant so as to expand a restaurant under construction, located at 3740 Belt Line Road, on application from Schlotzsky's Sandwiches, represented by Mr. Bernard Shaw of Cencor Realty Services.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on October 28, 2010, voted to recommend approval of an amendment to an existing Special Use Permit for a restaurant subject to no conditions.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Bernard Shaw with Cencor Realty Services spoke.

Ordinance 010-040 was approved.

A motion to Approve was made by Councilmember Roger Mellow.
The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #R9 - PUBLIC HEARING Case 1610-SUP/Einstein Brothers Bagels. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for a sandwich shop, located at 3750 Belt Line Road, on application from Einstein Bros. Bagels, represented by Mr. Bernard Shaw of Cencor Realty Services.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on October 28, 2010, voted to recommend approval of a Special Use Permit for a restaurant subject to the following condition: -The applicant shall submit a revised site plan that reduces the size of the restaurant to 2,400 square feet with at 230 square foot patio, eliminates the eight parallel parking spaces against the south property line, and moves the drive-thru window further north in the building to allow for more queuing space.

Voting Aye: Arfsten, DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 010-041 was approved subject to the following condition:

-The applicant shall submit a revised site plan that reduces the size of the restaurant to 2,400 square feet with at 230 square foot patio, eliminates the eight parallel parking spaces against the south property line, and moves the drive-thru window further north in the building to allow for more queuing space.

A motion to Approve w/Conditions was made by Councilmember Roger Mellow.
The motion was seconded by Councilmember Neil Resnik.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Mellow, Noble, Resnik
Voting Nay: Lay

Item #R10 - Presentation and discussion regarding the Town's participation in the restoration and renovation of the Audie Murphy House located in The Arbors complex at 14671 Midway Road, Addison, TX 75001.

There was no action taken.

_____
Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
SPECIAL MEETING AND WORK SESSION

November 10, 2010
6:00 PM - Town Hall
Addison Town Hall, 5300 Belt Line Road, Dallas, TX 75254
November 5, 2010, 5PM, Lea Dunn, City Secretary

Council Members Present:

Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Absent:

None

Item #S1 - Presentation, discussion and consideration of approval of an ordinance canvassing the results of the Special Election (regarding amendments to the City Charter) held on November 2, 2010.

Ordinance 010-042 was approved.

A motion to Approve was made by Councilmember Kimberly Lay.
The motion was seconded by Councilmember Don Daseke.
The motion result was: Passed
Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik
Voting Nay: None

Item #S2 - Discussion and establishment of a performance evaluation process for the City Manager.

There was no action taken.

_____
Mayor-Joe Chow

Attest:

_____
City Secretary-Lea Dunn

Council Agenda Item: #R 2b

AGENDA CAPTION:

Approval of an Ordinance amending the Town of Addison Employee Handbook by adding provisions thereto regarding social media.

FINANCIAL IMPACT:

N/A

BACKGROUND:

On October 26, 2010 Council approved a Social Networking /Media Usage Policy amending the Town's Local Area Network, Internet and Electronic Mail usage Policy. However, since the Town's Local Area Network, Internet and Electronic Mail usage Policy is included in the Town Employee Handbook and the Employee Handbook was adopted by ordinance, an ordinance is required to amend the Handbook.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Ordinance (Amending Employee Handbook)	Ordinance
Exhibit A to Ordinance	Exhibit

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE TOWN'S EMPLOYEE HANDBOOK BY ADDING A PROVISION REGARDING SOCIAL MEDIA; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, by Ordinance No. 008-023, the City Council of the Town of Addison, Texas adopted the Town of Addison Employee Handbook, and by this Ordinance the City Council desires to amend the Employee Handbook by adding thereto provisions regarding social media.

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

Section 1. Amendment. The Town of Addison Employee Handbook, adopted by Ordinance No. 008-023 of the Town, is amended by adding thereto a new Section 2.07A, "Social Media," to read as set forth in Exhibit A attached hereto and incorporated herein.

Section 2. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the Town, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

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

Section 4. Effective Date. This Ordinance shall take effect upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 23rd day of November, 2010.

_____
Mayor Joe Chow

ATTEST:

By:_____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By:_____
John Hill, City Attorney

EXHIBIT A
TO ORDINANCE NO. _____

A new Section 2.07A, "Social Media," is added to the the Town of Addison Employee Handbook to read as follows:

SECTION 2.07A
SOCIAL MEDIA

A. Purpose. To address the fast-changing landscape of the Internet and the way residents and other interested persons communicate and obtain information online, the Town of Addison Departments may consider participating in social media formats to reach a broader audience. The Town of Addison encourages the use of Social Media to further the goals of the Town of Addison and the missions of its departments where appropriate. Use of social media shall be for at least one of the following purposes: (i) to provide Town employees, residents, visitors, businesses, and other audiences with information about Town events, activities and issues, and (ii) to provide individuals and organizations outside of the Town with appropriate information about the Town. The Town of Addison has an overriding interest and expectation in deciding who may "speak" and what is "spoken" on behalf of the Town of Addison on social media sites. This policy establishes guidelines for the use of social media.

B. Definitions. In this Section 2.07A, the terms below shall mean as follows:

1. *Social Media*: Social media is content created by individuals using accessible and scalable technologies through the Internet. Examples of social media include Facebook, blogs, MySpace, RSS, YouTube, Second Life, Twitter, LinkedIn, Delicious, Flicker, etc.

2. *Blog*: (an abridgment of the term web log) is a Town of Addison website with regular entries of commentary, descriptions of events, or other material such as graphics or video.

3. *Town of Addison author*: An authorized Town of Addison official that creates and is responsible for posted articles and information on social media sites (see article below).

4. *Article*: An original posting of content to a Town of Addison social media site by a Town of Addison author.

5. *Commenter*: A Town of Addison official or member of the public who submits a comment for posting in response to the content of a particular Town of Addison article or social media content.

6. *Comment*: A response to a Town of Addison article or social media content submitted by a commenter.

7. *Town of Addison moderator*: An authorized Town of Addison official, who reviews, authorizes and allows content submitted by Town of Addison authors and public commentators to be posted to a Town of Addison social media site.

C. Policy – General.

1. No officer or employee of the Town may use or participate any social media in connection with or related to the business of the Town unless the same has been approved in accordance with this policy and all other applicable rules and regulations of the Town of Addison. These policies, and all other rules and regulations of the Town pertaining to social media, may be modified at any time.

   Prior to the use of or participation in any social media site by an employee of any Department of the Town, the social media site must first have been approved in accordance with this policy. All Town of Addison social media sites shall be (1) approved by the Director of Information Technology and the Department Head of the Department where use of a social media site is desired; (2) published using approved Town social networking platform and tools; and (3) administered by the Director of Information Technology or his designee. Designees within a Department for which a social media site has been approved for use can be any Department employee or volunteer designated by the Head of the Department that has a complete understanding of this policy and has appropriate content and technical experience.

2. All Town of Addison social networking (social media) sites shall adhere to applicable state, federal and local laws, regulations and policies, including the Texas Public Information Act and all Information Technology and Records Management and other applicable Town policies.

3. Content of social media sites must be able to be managed, stored and retrieved to comply with the Texas Public Information Act and e-discovery laws and policies.

4. All social network sites and entries shall clearly indicate that any articles and any other content posted or submitted for posting by any person are subject to public disclosure. Users of social media are not conferred and do not have an expectation of privacy under this policy.

5. Content submitted for posting that is deemed not suitable for posting by a Town of Addison social networking moderator because it is not topically related to the particular social networking site objective being commented upon, or is deemed prohibited content based on the criteria in Item 8. of this policy, shall be retained pursuant to the records retention schedule along with a description of the reason the specific content is deemed not suitable for posting.

6. The Town reserves the right to monitor content before it is posted on all social media outlets and accounts and to restrict or remove any content that it deems, in its sole discretion, to violate this policy or any applicable federal, state, or local law, rule, regulation or policy.

7. Each Town of Addison social networking site shall include an introductory statement which clearly specifies the purpose and topical scope of the social

network site. Where possible, social networking sites should link back to the official Town of Addison Internet site for forms, documents and other information.

8. Without limiting any other provision of this policy, social networking content and comments on any Town social media site that contains any of the following forms of content shall not be allowed for posting:

(a) Comments not topically related to the particular site or blog article being commented upon;

(b) Profane language or content;

(c) Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;

(d) Sexual content or links to sexual content;

(e) Solicitations of commerce;

(f) Conduct or encouragement of illegal activity;

(g) Information that may tend to compromise the safety or security of the public or public systems; or

(h) Content that violates a legal ownership interest of any person or entity.

9. All Town social networking moderators shall be trained regarding the terms of this Town of Addison policy, including their responsibilities to review content submitted for posting to ensure compliance with the policy.

10. All social networking sites shall clearly indicate they are maintained by the Town of Addison and shall have Town of Addison contact information prominently displayed.

11. Where appropriate, Town Information Technology security policies shall apply to all social networking sites and articles.

12. Employees representing the Town government via social media outlets must conduct themselves at all times as a representative of the Town and in accordance with all human resource policies. See Attachment C–Employee Guidance for Participating in Social Networking.

13. Employees found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.

14. All official Town of Addison presences on social media sites or services are considered an extension of the Town of Addison's information networks and are

governed by the Local Area Network, Internet and Electronic Mail Usage Policy signed by each employee and referenced to in the Town of Addison Employee Handbook.

15. Wherever possible, links to more information should direct users back to the Town of Addison's official website/s for more information, forms, documents or online services necessary to conduct business with the Town of Addison.

16. The Town of Addison's Information Technology Director shall approve what Social Media outlets may be suitable for use by the Town of Addison and its departments. The IT Director shall also serve to educate departments on how to best use various Social Media outlets to achieve their goals.

D. Blog Standards. Some social media outlets approved by the Town may allow the public to post comments to an article. Public comment posts shall not be allowed by unless approved by the City Manager, and the same may be discontinued if deemed necessary by the City Manager. Comments submitted by members of the public must be directly related to the content of an article. Town of Addison blog moderators shall allow comments that are topically related to the particular article being commented upon, with the exception of the prohibited content listed in Policy - General - Item 8 above.

1. Author and Commenter Identification

(a) All Town of Addison blog authors and public commentators shall be clearly identified. Anonymous blog postings and comments shall not be allowed.

(b) Enrollment of public commentators shall be accompanied by valid contact information, including a name, address, and email address.

2. Ownership and Moderation

(a) The content of each Town of Addison blog shall be the responsibility of the Department producing and using the blog.

(b) Documents and articles submitted to a Town of Addison blog shall be moderated by an authorized and trained blog moderator.

3. Blog Comments & Responses

(a) All blog articles and comments shall be reviewed and approved by an authorized blog moderator before posting on a Town of Addison blog.

(b) All blog articles and comments submitted for posting with attached content shall be scanned using antivirus technology prior to posting.

(c) The linked content of embedded hyperlinks within any Town of Addison blog articles or blog comments submitted for posting shall be evaluated prior to posting. Any posted hyperlinks shall be accompanied by a disclaimer stating that

the Town of Addison guarantees neither the authenticity, accuracy, appropriateness nor security of the link, web site or content linked thereto.

E. Employee Guidance for Participating in Social Networking.

The Town of Addison understands that social networking and Internet services have become a common form of communication in the workplace and among stakeholders and citizens. Social networks are online communities of people or organizations that share interests and/or activities and use a wide variety of Internet technology to make the interaction a rich and robust experience. Employees that choose to participate in social networks as a Town employee should adhere to the following guidelines.

1. Town policies, rules, regulations and standards of conduct apply to employees that engage in social networking activities while conducting Town business. Use of your Town e-mail address and communicating in your official capacity will constitute conducting Town business.

2. Town employees shall notify their supervisor and the IT department if they intend to create a social networking site or service to conduct Town business. An employee shall not use or participate in a social networking site to conduct Town business unless the same has been approved in accordance with Town policies.

3. Departments have the option of allowing employees to participate in existing social networking sites as part of their job duties. Department Heads may allow or disallow employee participation in any social networking activities in their departments.

4. Protect your privacy, the privacy of citizens, and the information the Town holds. Follow all privacy protection laws, i.e., HIPPA, and protect sensitive and confidential Town information.

5. Follow all copyright laws, public records laws, retention laws, fair use and financial disclosure laws and any others laws that might apply to the Town or your functional area.

6. Do not cite vendors, suppliers, clients, citizens, co-workers or other stakeholders without their prior written approval.

7. Any person identified as an employee of the Town of Addison on a publicly accessible site is expected to conduct themselves online in a manner that is consistent with their employment with the Town and the Town's goals and objectives. Make it clear that you are speaking for yourself and not on behalf of the Town of Addison if you are publishing content on a website outside of the Town and the content has something to do with the Town. If you publish content on any website outside of the Town of Addison and it has something to do with the work you do or subjects associated with the Town, use a disclaimer such as this: "The postings on this site are my own and don't necessarily represent the Town's positions or opinions."

8. Do not use ethnic slurs, profanity, personal insults, or engage in any conduct that would not be acceptable in the Town's workplace. Avoid comments or topics that may be considered objectionable or inflammatory.

9. If you identify yourself as a Town employee, ensure your profile and related content is consistent with how you wish to present yourself to colleagues, citizens and other stakeholders.

10. Correct your mistakes, and don't alter previous posts without indicating that you have done so. Frame any comments or opposing views in a positive manner.

11. Add value to the Town of Addison through your interaction. Provide worthwhile information and perspective.

Council Agenda Item: #R 2c

AGENDA CAPTION:

Approval of an agreement with Liz Oliphant & Associates, Inc. to assist with proactive media development and placement services as determined by the City Manager's Office.

FINANCIAL IMPACT:

Cost: $150.00 per hour

Attendance at City Council/staff meetings $40.00 per hour.

Funds are budgeted in the General Fund for these professional services.

BACKGROUND:

For the last several years, the Town has utilized the services of Liz Oliphant & Associates for a variety of special projects and to promote certain stories to the local/regional press. Staff is very pleased with the results that Liz Oliphant consistently provides. The term of the contract is one year terminating in 2011.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
☐ Liz Oliphant Letter	Backup Material
☐ Liz Oliphant Agreement	Backup Material

Liz Oliphant
and associates, inc.
PUBLIC RELATIONS•ADVERTISING

November 15, 2010

Mr. Chris Terry, Assistant City Manager
Town of Addison
P.O. Box 9010
Addison, TX 75001

Dear Chris,

I'm very pleased that you are submitting a contract for the City Council's approval to continue my 15+ year relationship with the Town of Addison regarding its public relations and communications needs.

Originally, I had specific areas of work – housing, education, economic development, intergovernmental affairs and crisis communications. However, as Town staffing and needs changed, so have my assignments. While I have maintained my interest and expertise in these specific areas, during the past several years, my activities have focused on positive publicity for the Town plus occasional special projects from the City Manager.

Most of my work has been directed to local media but we've had several important "hits" in national or regional professional journals. I'm always on the lookout for these opportunities. Local television stations expect to hear about the Town's tulip planting during the holidays and four or five stations cover it each year. Sometimes, features we've placed in NeighborsGO get a wider distribution through the regional Dallas Morning News editions. I've attached a few samples of my work.

All of these activities reinforce the Town's brand and messaging. I look forward to pursuing these tasks and other projects in behalf of the Town of Addison.

Cordially,

Liz Oliphant

Liz Oliphant, APR
Fellow, PRSA

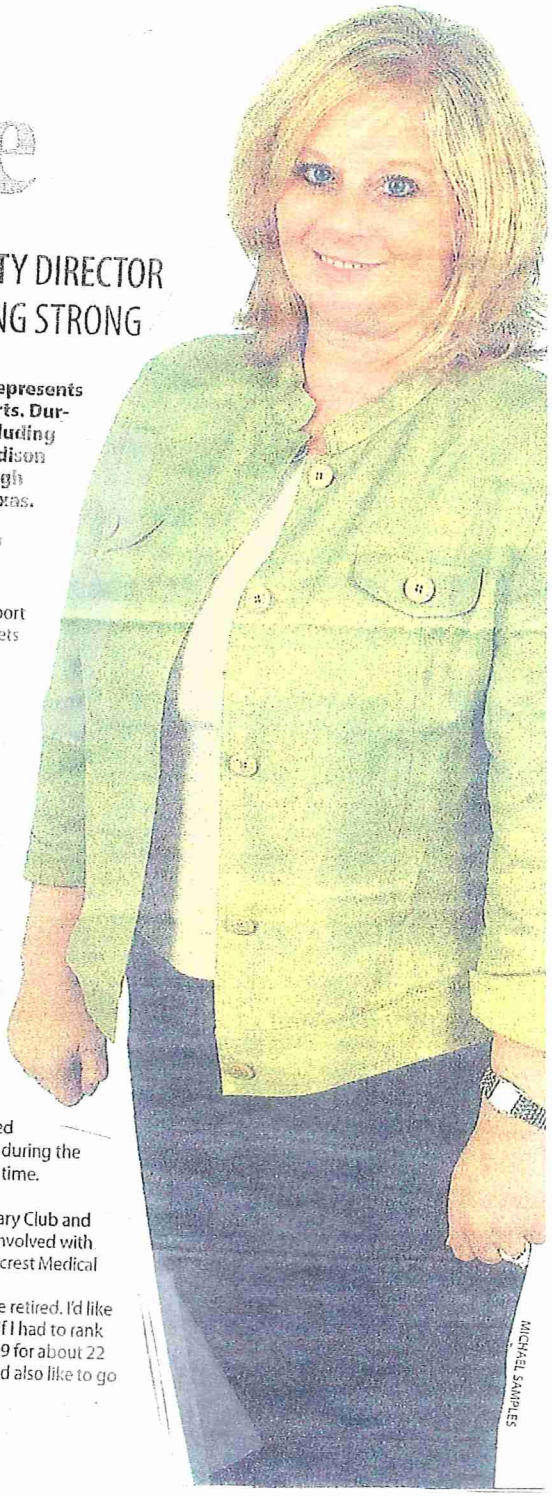
P.O. Box 1734 • Addison, Texas 75001
972/931-0164 Fax: 972/931-0642
OliphantPR@sbcglobal.net

Dallas Business Journal
Executive People
The movers and shakers of North Texas business

FACETIME

Setting a course

TEXAS AIRPORTS COUNCIL PAST PRESIDENT AND ADDISON AIRPORT DEPUTY DIRECTOR DARCI NEUZIL STRIVES TO KEEP AIRPORT INDUSTRY VITAL AND GROWING STRONG



MICHAEL SAMPLES

As an executive committee member and past president of the Texas Airports Council, Darci Neuzil, 47, represents and promotes airports statewide. That includes 26 commercial service and 274 general aviation airports. During her tenure, she promoted legislative efforts to ensure the economic stability of these facilities, including speaking at a Congressional briefing in September. Locally, her day job is as deputy director of the Addison Airport, overseeing 135,000 flights annually. The airport, which is owned by the Town of Addison though financially independent from it, primarily serves business travelers. It is one of 388 general aviation airports in Texas. Other operations at the airport that Neuzil manages include cargo companies, aircraft maintenance repair, flight training and the airport's museum. She previously worked as administrator of planning and development at D/FW International Airport. Neuzil was interviewed by staff writer Lena Dirbashi.

DESCRIBE YOUR FAMILY. My husband Carl and I have three children.

WHERE WERE YOU BORN AND RAISED? In Omaha, Neb.

WHAT IS YOUR ETHNIC BACKGROUND? We are third-generation Swedish. I would like to go visit and see where everybody's from. I used to speak it when I was little, but I would like to learn to speak it again.

WHAT IS YOUR FAVORITE CHILDHOOD MEMORY? Big family holiday celebrations with the Swedish traditions. Celebrating traditional Swedish festivities and the odd food that my grandma would cook like the traditional Swedish foods such as ostakaka, which is a dessert often served at Christmas. I don't cook Swedish dishes today.

WHERE DID YOU GO TO SCHOOL? At the University of Nebraska. My major was sociology.

AS A CHILD, WHAT DID YOU WANT TO BE WHEN YOU GREW UP? Originally I wanted to be a nurse. I think that is what every little girl wants to be.

WHAT WAS YOUR FIRST JOB EVER? Lifeguarding in high school.

WHAT WAS YOUR FIRST JOB AFTER COLLEGE? I was a receptionist at an oil company when I moved to Dallas. I quickly learned that the person who answers the phones knows a great deal about what goes on in the company.

WHO ARE YOUR ROLE MODELS IN YOUR INDUSTRY? My role models would have to include the city manager of Addison, Ron Whitehead. My second role model is Lisa Pyles, who was the former director of the Addison Airport. She's such a respected professional, but personally she's a woman of compassion with a deep faith.

WHAT IS THE BEST ADVICE YOU'VE RECEIVED? They may forget what you say, but they will always remember how you made them feel.

DESCRIBE A TYPICAL DAY IN YOUR LIFE. My day starts early, running around two teenage daughters. I don't think there is a typical day.

WHAT DO YOU DO TO RELAX? I spend time with my family. I enjoy gardening. I ride with my husband on the Harley — the first few times were scary. I also love to camp and hike.

WHAT IS YOUR PROUDEST ACCOMPLISHMENT? When Texas Airports Council was awarding a scholarship to an aviation student. It was a great accomplishment. I helped review the scholarship applications and choose the scholarship recipient.

WHAT DO YOU TELL YOUR EMPLOYEES TO LEAD AND INSPIRE THEM? We, as a team, stand behind them.

WHAT IS THE BEST PERK OF YOUR JOB? Getting to work around a world-class airport like this. I think we have a great airport because it's a great location and the great support it gets from the Town of Addison.

WHAT DO YOU WISH YOU WERE BETTER AT? Listening. I'm working on that.

WHAT DO YOU WISH YOU COULD LEARN TO DO? Play the piano. I've tried and am not very good at it. Sometime I'll have time to devote to it.

WHAT IS YOUR BIGGEST PET PEEVE? People who are not thankful for what they have.

WHERE DO YOU GO WHEN YOU GO OUT TO EAT? I work in Addison, so it's something new every day. We have 170 places to eat within a 2-mile radius.

WHAT DO YOU WISH YOU'D INVENTED? A cure for cancer.

WHAT IS YOUR GREATEST STRENGTH? I think I can adapt to change.

WHAT IS YOUR GREATEST WEAKNESS? Ice cream.

WHAT ARE YOU READING NOW AND WHY DO YOU LIKE IT? I typically read with my Bible study.

WHAT'S THE CRAZIEST, DUMBEST OR MOST FUN THING YOU'VE EVER DONE? A trip that involved riding a Harley and whitewater rafting. A couple of times during the trip, I wasn't sure any of us would survive. We had a great time.

WHAT AREAS ARE YOU INVOLVED IN WITH THE COMMUNITY? I'm active with the Addison Midday Rotary Club and the North Texas Aviation Marketing Committee. I'm also involved with the National Business Aviation Association and the Metrocrest Medical Foundation.

WHAT'S YOUR PLAN IN THE NEXT 10 YEARS? To be retired. I'd like to see myself enjoy more time with my family. Life's busy. If I had to rank my busy level from 1 to 10, I would say I'm 9, and it's been 9 for about 22 years. I would like to see it go down to 7 in 10 years. I would also like to go to Sweden. My parents have been there.

ldirbashi@bizjournals.com | 214-706-7119

PHOTOS SUBMITTED BY LIZ OLIPHANT

Students and VIPs share honors at the groundbreaking ceremony for George Herbert Walker Bush Elementary School on Feb. 19.

Town breaks ground on its first school

BY LIZ OLIPHANT

More than 50 educators, elected officials, Addison City Council members, parents and area residents turned out Feb. 19 for the groundbreaking ceremony for George Herbert Walker Bush Elementary School, to be built at 3939 Spring Valley Road in Addison.

Dallas Independent School District's Northwest Elementary Learning Community executive director Ivonne Durant presided over the event. After remarks from DISD board of trustees Edwin Flores, superintendent of schools Michael Hinojosa and Addison Mayor Joe Chow, DISD deputy chief of operations Phil Jimerson told the crowd about construction plans and timetable for the school. The first students are scheduled to enter the school in August 2011.

State Senator Florence Shapiro introduced George P. Bush, grandson of President George Herbert Walker Bush, to express the family's thanks for naming the new school. Then, students and VIPs donned hard hats and wielded ceremonial shovels for the formal groundbreaking.

State Senator Florence Shapiro introduces Jeb Bush for remarks from the Bush family.

Students from the Anne Frank Elementary School Choir provided music for the event and the Thomas C. Marsh Middle School Leadership Cadet Corps presented the colors for the pledge of allegiance. Greeters were students from Jerry Junkins Elementary School.

Liz Oliphant submits to neighborsgo.com on behalf of the town of Addison.

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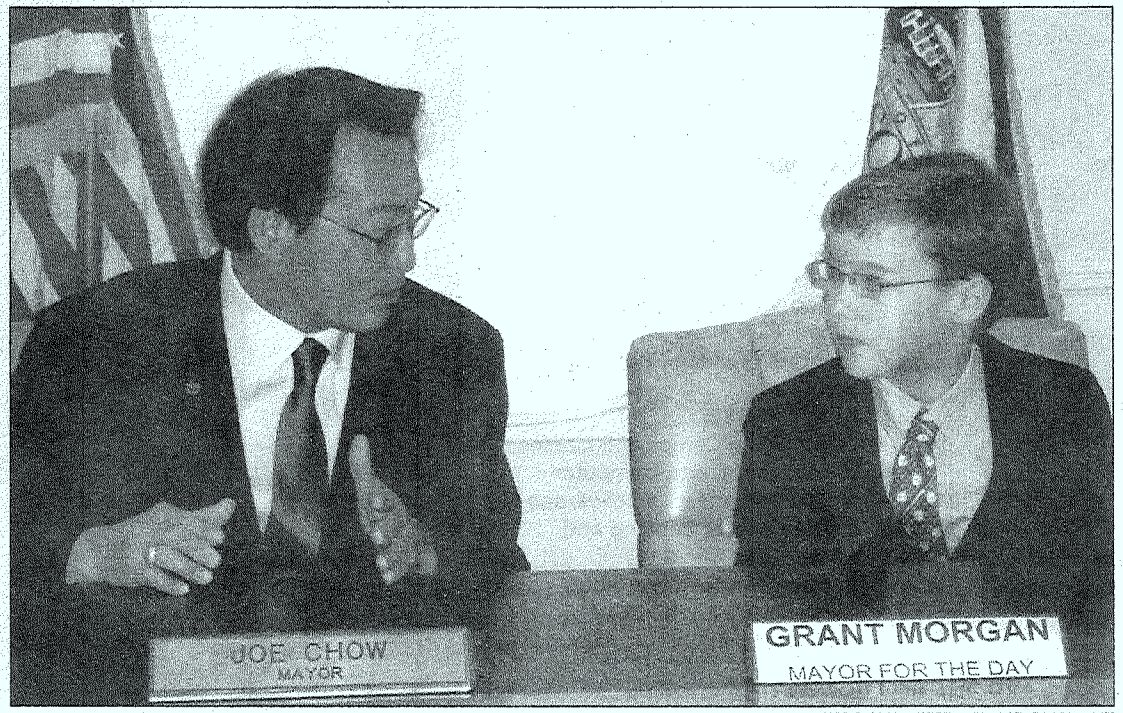

PHOTOS SUBMITTED BY LIZ OLIPHANT

Above: Mayor Joe Chow welcomes Grant Morgan to the city council chambers when Grant acted as Mayor of the Day on March 16. **Left:** Office Jeff Rose allows Grant to try out a police motorcycle during his tour of the town's departments. **Below:** Just about every boy dreams of being a fighter pilot, and Grant got his chance to sit in a fighter cockpit at the Cavanaugh Flight Museum.

Fourth-grader named Addison Mayor of the Day

BY LIZ OLIPHANT

Hasn't every kid dreamed — "If I were mayor/governor/president, I would ..." and fill in the blank.

Well, Greenhill fourth-grader Grant Morgan acted as Addison's Mayor of the Day on March 16.

While he didn't issue any proclamations or implement new laws, Grant saw the inner workings of the town. The town of Addison donated the Mayor of the Day experience to a Greenhill school auction last year and Grant's parents, Debra and John Morgan, were the winning bidders.

Grant began the day at Town Hall by meeting Mayor Joe Chow, who issued a proclamation naming Grant as Mayor of the Day. After trying out the mayor's chair in the city council chambers, it was off to the police department, where he toured the police station and jail, examined the equipment in a patrol car and motorcycle and saw the firing range.

Next, he went across the street to the fire department, where he watched the firefighters complete a virtual-reality training session. He was excited to be able to climb up on the fire trucks and inside the mobile intensive care unit. Then, it was off to lunch as Mayor Chow's guest at his restaurant, May Dragon.

After lunch, he toured the service center, talking with staff in the streets department and visiting the town vehicles being repaired in the garage. But the highlight of his day was visiting Addison Airport and Cavanaugh Flight Museum Airport staff showed him hangars, planes, the fuel farm and control tower. At the museum, he toured the exhibits and was excited to climb in a World War II tank and one of the vintage fighter planes.

"All of it was really cool, especially the airport," Grant said. When asked whether his experiences might encourage him to work in municipal government when he grew up, his reply was "Yep, probably."

"Grant is an exceptional young man," said general services director Mark Acevedo, who escorted Grant during the day. "We had a lot of fun showing him the various operations of the town."

Liz Oliphant contributes to neighborsgo.com on behalf of the town of Addison. -

Council addresses new visitor center

BY LIZ OLIPHANT

Each member of the Addison City Council reported on various aspects of the town's activities at a recent town meeting.

A large crowd attended the event at the Addison Conference and Theatre Centre.

"Several new residential projects and commercial developments will be coming on line soon that will help strengthen the local economy," Mayor Joe Chow said.

The town's new visitor center is set to open in June in Village on the Parkway. It will house the Visitor Services Department, as well as the Metrocrest Chamber of Commerce and The Craft Guild.

The George H. W. Bush Elementary School is also under construction on Spring Valley Road. This is the first sustainable school in Texas and will connect to an expanded hike and bike trail so students can walk or ride to classes. Chow encouraged those in Chow encouraged those in attendance to support Addison retailers, restaurants, hotels and businesses by "shopping Addison first to support the local economy."

Liz Oliphant contributes to neighborsgo.com on behalf of the town of Addison.

lton | Farmers Branch | Addison

EDUCATION

DISD breaks ground on two schools

Elementaries are first progress on bond project OK'd in '08

By DIANE RADO
Staff writer
drado@dallasnews.com

Dallas Independent School District will break ground on two elementary schools this week, showcasing the first significant and tangible results from a $1.35 billion bond program approved in 2008 to build and renovate public schools.

For months, the district has been involved in behind-the-scenes work, from planning and land acquisition to architectural design work.

Today marks the first groundbreaking ceremony, for the new Ebby Halliday Elementary School in southeast Dallas. Friday, the district will break ground for the new George Herbert Walker Bush Elementary School in Addison.

For those in search of celebrity sightings: Neither former president is scheduled to attend the groundbreaking ceremony for the Bush school, named after the elder Bush, the 41st president. But George P. Bush, son of former Florida governor Jeb Bush, is scheduled to attend, according to the school district.

Ebby Halliday, a longtime Dallas realtor and entrepreneur in her late 90s, is scheduled to be at the groundbreaking for the school named after her. Halliday founded one of the largest privately-owned residential real estate firms in the nation.

District 4 DISD Trustee Nancy Bingham, whose district is home to the new Halliday school, said she has pushed to name schools after strong women who are inspiring role models — and Ebby Halliday is one of those women.

"She was a pioneer before it was fashionable for women to be in business," Bingham said. "She was a trendsetter."

Overcrowding

The new school will be built for at least 800 students in Pre-K through fifth grades and help ease crowding at Lagow and Moseley elementary schools in District 4, Bingham said. "Every school out here in the southeast region is overcrowded," she said.

The new Bush school will be built for 824 Pre-K through fifth-grade students, and it also will help relieve crowding at several area schools.

The Bush school will be a "green" school designed with natural light, plants, and water and energy conservation in mind, said District 1 Trustee Edwin Flores. The city of Addison is building a trail system that will allow kids to ride their bikes to school, Flores said.

DISD's Board of Trustees in January approved spending about $25 million in bond funds on the two new schools, part of about $80 million in construction contracts approved in connection with the 2008 bond program. The board will consider about $60 million in contracts for school construction and renovations at its meeting later this month.

Other changes

Overall, the bond program is expected to pay for 14 new schools, additions to 12 schools, and renovations to more than 200 schools, according to the district. The 2008 program follows a $1.37 billion bond program that was approved in 2002.

Still, the district struggles with some crowded campuses and reliance on portable classrooms to capture the overflow of students.

Prior to the 2002 bond program, the district had not had a bond election for 10 years. "That was part of the problem — we got so far behind," said Phil Jimerson, the DISD official who oversees the bond program. "We've just been playing catch-up" on construction and renovations, he said.

At the same time, some schools are not filled to capacity because of declining student population.

"There are parts of town where the population is not as strong as it used to be, but it wouldn't make sense to bus a student nine or 10 miles across the district to go to school," DISD spokesman Jon Dahlander said.

GO & DO
New campuses

Groundbreaking ceremonies:
■ Ebby Halliday Elementary School
10210 Teagarden Road in Dallas
Today, 10:30 a.m.
■ George Herbert Walker Bush Elementary School
3939 Spring Valley Road in Addison
Friday, 1:30 p.m.

AGREEMENT FOR PUBLIC RELATIONS SERVICES

THIS AGREEMENT is between the Town of Addison, a municipal corporation, of Dallas County, Texas (herein referred to as "TOWN") (acting through its City Manager with approval of the City Council) and Liz Oliphant & Associates, Inc. (herein referred to as "AGENCY"), a Texas corporation with its principal place of business in the City of Dallas, Dallas County, Texas.

WHEREAS, the TOWN requires the assistance of a public relations firm to assist with special projects; and

WHEREAS, the TOWN desires to retain the services of Liz Oliphant & Associates, Inc. to provide such assistance;

NOW, THEREFORE, in consideration of the mutual covenants set out herein and for other good and valuable consideration, the TOWN and AGENCY hereby agree as follows:

SECTION I DUTIES

(a) TOWN hereby retains AGENCY to assist in the development and maintenance of a communications program for the TOWN.

(b) During the term of this Agreement, the TOWN may assign additional duties to AGENCY from time to time, subject to AGENCY's desire to handle same. If additional duties are assigned to AGENCY and AGENCY agrees to handle the same, all terms and conditions hereof shall apply in the same manner as with respect to the originally assigned duties.

SECTION II SCOPE OF SERVICES

At the TOWN's request, AGENCY shall assist in the development of a plan for communications and public relations for the community. AGENCY'S services shall include the following:

(a) AGENCY shall be responsible for assisting TOWN Staff in meeting the needs of the Mayor, Council Members and senior Staff.

(b) AGENCY shall develop plans and assist with other special projects as determined and directed by the City Manager or his designated representative.

SECTION III COST ESTIMATES

AGENCY agrees to provide to the TOWN cost estimates of all work it is asked to perform on the TOWN's behalf, to the best of AGENCY's ability, based upon the items and services described in Section II, Scope of Services.

SECTION IV COMPENSATION

(a) The TOWN agrees to compensate AGENCY for the services rendered under this Agreement on an hourly basis according to the following schedule (except for attendance at TOWN Council or Staff meetings as set forth below):

Principal (Liz Oliphant)	$150.00 per hour
Production Coordinator	$ 50.00 per hour
Clerical/Detail Service Fee	$ 20.00 per hour

Attendance at Council meetings or Staff meetings, upon the request of, or with the prior approval of the City Manager, shall be at a rate of $40.00 per hour.

(i) Outside Art and Production Cost — Copies of invoices for outside art and production costs incurred by AGENCY on behalf of the TOWN must be accompanied by invoices to receive reimbursement.

(ii) Out-of-Pocket Costs — The TOWN will reimburse AGENCY at cost for AGENCY's expenditures for copies, telegrams, telephone, freight express, local deliveries, and postage incurred by AGENCY on behalf and at the request of the TOWN. Such costs will be contained in the billing provided to the TOWN.

(b) AGENCY agrees to provide to the TOWN a time frame or "number of days to complete" on the cost estimate for each project.

SECTION V BILLING AND PAYMENT

(a) Detailed invoices for all work related to the services performed hereunder and for printed collateral material, and other projects shall be provided to the TOWN on a monthly basis. The invoice shall include a detailed listing of hourly charges for each service rendered including meetings, etc. as well as references as to the projects to which the hourly charge applies. In addition, attachments of all related receipts, shipping receipts for any and all items related to a project including but not limited to materials, out-of-pocket expenses, printed materials, etc. should be included. Should AGENCY fail to substantiate the costs contained in the invoice, then the TOWN reserves the right to request clarification prior to payment. The TOWN agrees to use reasonable efforts to inform AGENCY of any questions concerning an invoice within seven working days. All invoices not in question shall be payable within thirty (30) days of the date of the TOWN's receipt of the statement and shall be past due after that date.

(b) AGENCY reserves the right to charge interest to the TOWN and the TOWN hereby agrees to pay AGENCY interest at the rate of prime plus 1% per annum for charges not in question that are delinquent for more than sixty (60) days from receipt of such ; provided, however, that such amount shall not exceed the maximum amount of interest permitted to be paid by the TOWN under any law or regulation.

(c) In the event of any question on a statement, AGENCY agrees to provide the TOWN with a revised invoice containing those items for payment not in question. The TOWN agrees to pay such within thirty (30) days of receipt.

SECTION VI RELATIONSHIP BETWEEN AGENCY AND THE TOWN

(a) Title to all materials which AGENCY purchases on the TOWN's behalf passes to the TOWN as principal. AGENCY agrees to defend and indemnify the TOWN and its employees and officials from claims made against the TOWN by a supplier in connection with any purchase to the extent the TOWN has made payment to AGENCY for such purchase.

(b) Nothing herein contained shall be deemed to require that AGENCY undertake any campaign, prepare any advertising material or publicity, or cause publication of any advertisement or article, which, in AGENCY's judgment, would be misleading, indecent, libelous, unlawful or otherwise prejudicial to the TOWN's or AGENCY's interest.

(c) AGENCY assumes no responsibility and TOWN assumes all responsibility relative to the validity of claims made by the TOWN in its marketing efforts.

(d) AGENCY shall not contract with any persons employed by the TOWN or its officials or employees during the course of this Agreement.

(e) AGENCY is under a duty not to disseminate, or use for its own purposes, both during and after the termination of this Agreement, any "confidential information" imparted to AGENCY by the TOWN. "Confidential information" in regard to this contractual obligation shall mean any information imparted to AGENCY by the TOWN in either verbal or written form so designated as "confidential information."

(f) Ideas, plans, musical themes, slogans and any other creative products that have not been adopted by the TOWN in campaigns conducted by AGENCY or reserved by the TOWN for possible future use are to be considered the sole property of AGENCY to the untrammeled use of which AGENCY shall solely be entitled. Those adopted by the TOWN (or reserved by the TOWN for possible future use) are the sole property of the TOWN to the untrammeled use of the TOWN.

(g) **AGENCY'S Defense, Indemnity, and Hold Harmless Obligation.** AGENCY AGREES TO AND SHALL **DEFEND, INDEMNIFY AND HOLD HARMLESS** THE TOWN, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (EACH AN "INDEMNITEE") FROM AND AGAINST (I) ANY AND ALL CLAIMS ARISING FROM CONTRACTS BETWEEN THE AGENCY AND THIRD PARTIES MADE PURSUANT TO THIS AGREEMENT, AND (II) ANY AND ALL SUITS, CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES OF ANY KIND AND NATURE WHATSOEVER MADE UPON, INCURRED BY, SUFFERED BY, OR ASSERTED AGAINST THE TOWN OR ANY OTHER INDEMNITEE, WHETHER DIRECTLY OR INDIRECTLY (TOGETHER, "DAMAGES") RESULTING FROM, RELATING TO, ARISING OUT OF, OR IN CONNECTION WITH (I) AGENCY'S PERFORMANCE OF THE SERVICES OF THIS AGREEMENT AS SET FORTH IN SECTION II HEREOF, (II) REPRESENTATIONS OR WARRANTIES BY AGENCY UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION OF AGENCY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND CONTRACTORS, OR ANY OTHER PERSON FOR WHOM AGENCY IS LEGALLY RESPONSIBLE, UNDER, RELATED TO, IN CONNECTION WITH, OR IN THE PERFORMANCE OF THIS AGREEMENT. **SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN AND/OR ANY OTHER INDEMNITEE, OR BY ANY ACT OR OMISSION BY THE TOWN AND/OR ANY OTHER INDEMNITEE THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER,** AGENCY'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE TOWN'S OR OTHER

INDEMNITEE'S PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSE THE LOSS. LIKEWISE, AGENCY'S LIABILITY FOR THE TOWN'S OR ANY OTHER INDEMNITEE'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE TOWN'S OR OTHER INDEMNITEE'S PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

AGENCY shall promptly advise the TOWN in writing of any claim or demand against the TOWN, or any other Indemnitee, or AGENCY related to or arising out of AGENCY'S activities under or pursuant to this Agreement and shall see to the investigation and defense of such claim or demand at AGENCY's sole cost and expense. The Town and the other Indemnitees shall have the right, at the Town and other Indemnitees' option and at their own expense, to participate in such defense without relieving AGENCY of any of its obligations hereunder. This indemnity, hold harmless, and defense obligation shall survive the expiration or earlier termination of this Agreement.

(h) AGENCY shall coordinate all its activities and efforts through and with the office of the City Manager for the TOWN. All materials prepared for publication or released to news media shall be approved by the City Manager or his designated representative, prior to publication or release. All AGENCY'S billing under this Agreement will be sent to the City Manager and any other special projects or assignments from the TOWN will be received only from the City Manager.

(i) AGENCY is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise relationship, or to allow the TOWN to exercise discretion or control over the professional manner in which AGENCY performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by AGENCY shall be provided in a manner consistent with all applicable standards and regulations governing such services.

SECTION VII ACCOUNTING

AGENCY shall keep complete and accurate books and records. AGENCY, upon receiving reasonable notice from the TOWN, shall provide the TOWN and/or the TOWN's designated accountants with full and reasonable disclosure of its accounting practices, procedures, receipts and disbursements related to the TOWN's account, and an opportunity to examine all supporting documentation.

SECTION VIII TERM OF AGREEMENT; TERMINATION

(a) The term of this Agreement shall be from October 1, 2010 to September 30, 2011; provided, however, that unless otherwise terminated as provided for herein, this Agreement shall automatically renew for a period of one year following the said date of termination, subject to the annual appropriation and budgeting of revenues by the TOWN to pay the amounts set forth in this Agreement (and in the event such appropriation and budgeting of revenues is not made by the TOWN, this Agreement shall terminate at the end of the fiscal year for which revenues to pay for the services set forth in this Agreement have been appropriated and budgeted by the Town). During the term of this Agreement, should either AGENCY or the TOWN wish to terminate this Agreement, each shall have that right upon giving the other a sixty (60) day written notice of termination. During

the sixty (60) day period, the compensation and service arrangements stated herein apply. All notices under this Agreement shall be provided in writing to the following:

To Agency:	To the Town:
Liz Oliphant Liz Oliphant and Associates, Inc. 16400 Ledgemont Lane @ 1211 Addison, TX 75001	Ron Whitehead Town of Addison P.O. Box 9010 Addison, Texas 75001

(b) At the date of termination, any advertising, merchandising, package and similar plans and ideas prepared by AGENCY and submitted to the TOWN but not used by TOWN shall remain AGENCY's property unless it was either mutually agreed in writing that any such plan or idea became the TOWN's property or specific payment of the cost of its development was agreed upon and made by the TOWN.

(c) Upon termination of this Agreement, AGENCY shall transfer, assign and make available to the TOWN all property and materials in AGENCY's possession or control belonging to and paid for by the TOWN.

(d) At the termination of this Agreement, AGENCY shall give all reasonable cooperation toward transferring, with the approval of third parties in interest, all contracts and other arrangements with advertising media or others, for advertising space, facilities and talent, and other materials yet to be used, and all rights and claims thereto and therein, pertaining to the TOWN's account, upon being duly released from the obligations thereof.

(e) Upon termination of this Agreement, any non-cancelable contracts made on the TOWN's authorization and still existing at termination hereof, which contracts were not or could not be assigned by AGENCY to the TOWN, shall be carried to completion by AGENCY and paid for by the TOWN in the manner described herein.

SECTION IX MISCELLANEOUS

(a) Principals of the AGENCY agree to adhere to the Code of Professional Standards established by the Public Relations Society of America.

(b) AGENCY and the TOWN hereby agree that should any dispute arise out of this contract, then venue of any litigation arising therefrom shall be exclusively in Dallas County, Texas. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws provisions.

(c) Any amendments, modifications, deletions or other changes from the terms of this Agreement shall be valid only if made by subsequent written instrument signed by the duly authorized representatives of both AGENCY and TOWN. If any section, paragraph, sentence, clause, phrase word, or any other provision of this Agreement is held to be illegal, void, invalid or unenforceable under present or future laws, such section, paragraph, sentence, clause, phrase, word, or other provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, void, invalid or unenforceable section, paragraph, sentence, clause, phrase, word, or

other provision is not a part hereof, and the remaining sections, paragraphs, sentences, clauses, phrases, words, and provisions hereof shall remain in full force and effect.

(d) The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct of the other party which is in violation of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct. Except as provided in this Agreement, this Agreement and all of its terms and provisions 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.

(e) This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

(f) The captions used herein are for convenience of reference only and shall not be deemed neither to impart substance of meaning nor modify the content of the text of this Agreement. 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.

(g) Except as provided herein, neither party may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

EXECUTED TO BE EFFECTIVE as of _____, 2010.

TOWN OF ADDISON, TEXAS

By:_____
Ron Whitehead, City Manager

ATTEST:

By:_____
Lea Dunn, City Secretary

LIZ OLIPHANT & ASSOCIATES, INC.

By:_____

Printed Name:_____

Title:_____

Council Agenda Item: #R 2d

AGENDA CAPTION:

Approval of an agreement with The Margulies Communication Group to assist the Town with media communications.

FINANCIAL IMPACT:

Budgeted Amount: $42,000 (General, Airport and Hotel funds)

Cost: $42,000 plus expenses that may be incurred

BACKGROUND:

For the last several years, the Town has utilized the services of The Margulies Communications Group to respond to media inquiries, particularly as it relates to crisis situations. The Margulies Group provides a team of five media relations specialists who are on call 24/7 to assist with media issues. This includes assisting the Addison Police Department on scene with public safety related incidents, Addison Airport as well as all other city departments. In addition the agreement is structured so that the Town may utilize the services of the Margulies Group on specific projects to communicate the Town's position clearly to the public, media and other interested parties and to minimize the potential for negative publicity for the Town by achieving accurate coverage of important issues. The arrangement has served the Town well and enabled the Town to address the media in an efficient, effective manner.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Margulies Letter	Backup Material
Margulies Contract	Backup Material

The Margulies Communications Group

October 16, 2010

Mr. Chris Terry
Assistant City Manager
Town of Addison
Addison Town Hall
5300 Belt Line Road
Dallas, Texas 75254

Dear Chris:

Our partnership with the Town of Addison dates back to the 1980's when our firm was retained to assist in media relations issues and the selection of a new mayor. Later, our team helped develop and publicize Addison Oktoberfest and handled publicity during the Grand Prix auto races that were staged at Addison Airport in the late 1980's.

Our Current Role

Currently our team provides four highly trained media relations experts who are on call 24/7 to deal with immediate media relations issues for the Town of Addison and Addison Airport. This includes being the Town's on-camera spokesperson for the police department, fire department, airport and Town Hall when appropriate.

We work directly with the City Attorney and City Manager's office on strategic issues such as the recent liquor election and numerous other issues that have the potential to draw media interest. For example, the MCG team assisted Addison Police with media plans for a visit from former Pakistan president Pervez Musharraf to Addison and was on-site to handle media inquires for demonstrations planned for the event.

6210 Campbell Road, Suite 200 • Dallas, TX 75248
214-368-0909 phone • 214-692-5959 fax www.prexperts.net

There are also opportunities for positive media coverage such as the television program The View naming Addison as one of the top five Sexy Suburbs. The MCG team helps evaluate these types of media opportunities and working with the city staff makes sure that the media has accurate information concerning the Town.

We have enjoyed our long partnership with the Town of Addison. We look forward to continuing and enhancing this relationship in the future.

On behalf of the MCG team,

David S. Margulies

David S. Margulies
President

6210 Campbell Road, Suite 200 • Dallas, TX 75248
214-368-0909 phone • 214-692-5959 fax www.prexperts.net

This letter, when signed by you, will confirm that the Town of Addison (Client) has retained The Margulies Communications Group (MCG), a Texas Corporation as public relations counsel to provide the services described below. Such services shall be provided beginning on October 1, 2010.

Services

MCG will, at Client's request from time to time and to the Client's satisfaction, assist Client in responding to media inquiries concerning crisis communications issues as well as other assignments (non-crisis matters and other matters) given to MCG by Client. MCG shall submit such responses and other work prepared by MCG for Client's review and consideration of approval prior to release to the media or any other third party, except when MCG is called upon by Client to be its representative and spokesperson in connection with an incident or matter and the then existing circumstances do not permit MCG adequate time to submit such responses or other work to Client for its review and consideration prior to its release. MCG will work with Client to develop strategies to minimize any negative publicity during crisis situations and will assist the Client in providing accurate and timely information to the news media. In providing such services, MCG shall comply with all applicable federal, state and local laws, rules and regulations.

For the services described above, Client will pay MCG a monthly retainer of $3,500 for each calendar month during the term hereof (the "Monthly Fee"). If incurred, MCG will bill Client for reimbursement of out-of-pocket expenses incurred on Client's behalf when these expenses have been approved by Client in advance.

MCG shall submit to Client, on or before the fifth day of each month, an invoice for the Monthly Fee. Each such invoice shall include (i) a description of the work performed for the month preceding the date of the invoice, (ii) time reports for that month for all MCG personnel who work under this contract, (iii) an itemized statement of any reimbursable expenses incurred; (iv) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (v) any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to MCG. Client shall pay the Monthly Fee set forth in the invoice for service properly performed and all expenses properly incurred by MCG and set forth in the invoice within thirty (30) days following Client's receipt of the invoice.

This contract shall last for one year from October 1, 2010, subject however to the earlier termination of this contract as provided for herein and subject to the annual appropriation and budgeting of funds by Client to make payments under this contract. If funds to make any payment or payments under this contract during the said term are not appropriated and budgeted by the Town, this contract shall terminate on the last day of the Client's fiscal period in which funds were appropriated and budgeted without penalty or expense to client of any kind whatsoever.

Either party may terminate this contract at any time and for any reason by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such

termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of Client, and MCG shall promptly deliver such items to Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of said termination.

If MCG, MCG's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the Client, then Client shall have the right to terminate this contract effective immediately upon the Client giving written notice thereof to MCG. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of the Client and MCG shall promptly deliver such items to the Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of such termination.

In connection with this Agreement, MCG shall provide and maintain in full force and effect during the term of this Agreement:

(i) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of $500,000 each-occurrence each accident/$500,000 by disease each-occurrence/$500,000 by disease aggregate;

(ii) Commercial general liability insurance at minimum combined single limits of $1,000,000.00 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 contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement).

(iii) 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.

(iv) Professional Liability coverage at minimum limits of $1,000,000. This coverage must be maintained for at least two (2) years after the termination of this letter agreement. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this agreement or any extensions or renewals thereof.

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

(a) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.

(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 shall be contained in the Workers Compensation and all liability policies.

(d) 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.

(e) All insurance policies shall be endorsed to the effect that the Town of Addison 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 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) MCG may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

(i) 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, satisfactory to Client, 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.

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

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

MCG AGREES TO AND SHALL DEFEND (TO THE EXTENT INSURANCE COVERAGE IS AVAILABLE), INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICIALS, 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 (A) MCG'S PERFORMANCE OF THIS AGREEMENT, (B) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF MCG'S OBLIGATIONS UNDER THIS AGREEMENT, AND (C) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF MCG, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACOTRS UNDER,

RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT (AND INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR DAMAGES RELATING TO COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

With respect to MCG's indemnity obligation set forth above, MCG shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee. If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence of both MCG and the Indemnitee, MCG's indemnity obligation will be limited to a fraction of the total Damages equivalent to MCG's own percentage of responsibility. With respect to MCG's duty to defend set forth herein in subsection, MCG shall have the duty, at its sole cost and expense, through counsel of its choice (subject to the Client's reasonable consent), 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. In the event that MCG 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 Client 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 MCG, and MCG shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Client in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action. The terms and provisions of this defense and indemnity set forth above shall survive the expiration or termination of this Agreement.

Client agrees to indemnify and hold harmless MCG from and against all losses which MCG may incur, based on information, representations, reports or data (together, "information") negligently furnished by Client in writing to MCG under this letter agreement, to the extent that (i) such information is accurately provided by MCG to the media and accurately disclosed by the media to the public, and (ii) the Client is legally liable for making such information available to the public; provided, however, that this indemnity and hold harmless is given by Client subject to and without waiving (i) any immunity available to Client, (ii) any tort limitation and any of its rights under, and the indemnity and hold harmless provided for herein is subject to and shall not exceed the monetary limitations of damages as set forth in, the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem. Code, as amended) or any successor statute thereto, and (iii) any defenses afforded by law or otherwise; and further, in no event shall this indemnity and hold harmless apply to punitive or exemplary damages of whatever kind or nature.

MCG shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to Town upon request. MCG shall assure the confidentiality of any records that are required by law to be so maintained. MCG shall prepare and forward such additional or supplementary records as Town may reasonably request.

Inasmuch as this contract is intended to secure the specialized services of MCG, MCG has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of Client, and any such assignment, transfer, delegation, subcontract or other conveyance without the Client's prior written consent shall be considered null and void.

Where the terms of this contract require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Client:	To MCG:
5300 Belt Line Road Dallas, Texas 75254 Attn: Chris Terry	6210 Campbell Road Suite 200 Dallas, Texas 75248

No reports, information, documents, or other materials given to or prepared by MCG under this contract which Client requests to be kept confidential shall be made available to any individual or organization by MCG without the prior written approval of Client.

This letter agreement is entered into for the sole benefit of MCG and Client. Nothing in this letter agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof.

The reports, documents and materials prepared by MCG under this contract shall be the sole property of Client upon payment by Client to MCG for the fees earned under this contract in connection with the preparation and delivery of such reports, documents and materials.

If any clause, paragraph, section or portion of this contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the contract initially.

Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this contract shall survive the cancellation, expiration or termination of this contract. Obligations or either party hereunder arising prior to the termination or cancellation of this contract allocating responsibility or liability of or between Client and MCG shall survive the completion of this services hereunder and termination or cancellation of this contract.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this contract 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 the event of any action under this contract, 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 Contract; 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 contract.

MCG shall, during the entire term of the contract, be construed to be an independent contractor and nothing in this contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the Town to exercise discretion or control over the professional manner in which MCG performs the services which are the subject matter of the contract; provided, however, that the services to be provided by MCG shall be provided in a manner consistent with the highest ethical standards and applicable laws and regulations governing such services.

This contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. MCG shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

Margulies Communications Group, Inc

David S. Margulies, President

Date: _____

Accepted and Approved:

Town of Addison

By: _____ (name and title)

Date: _____

Council Agenda Item: #R 2e

AGENDA CAPTION:

Approval of the annual renewal of the contract for professional services with Rodney Hand for production of the *Addison Magazine*.

FINANCIAL IMPACT:

Budgeted Amount: $111,750 (Hotel Fund)
$105,000 for advertising ($26,250 per edition), $6,750 for distribution to the specific employers and buildings within the designated area

BACKGROUND:

In the Fall of 1998 the Town entered into agreement with Hand & Associates to buy advertising in the Addison/North Dallas Visitors Guide for the purpose of promoting Addison and the surrounding area to visitors. The Guide continues to be well received and is distributed to all the hotel rooms in the Addison and LBJ corridor as well as the lobbies of specific buildings and employers within the defined geographic area.
Three years ago Hand launched a new publication, Addison and The North Dallas Corridor Magazine that is mailed to all residential properties in Addison and the North Dallas area. The publication continues to be well received.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Memo from Rodney Hand	Backup Material
Rodney Hand Agreement	Backup Material
Exhibit A	Backup Material

RODNEY HAND + ASSOCIATES
MARKETING COMMUNICATIONS LP

Memo

To: Town of Addison city council
From: Rodney Hand
Re: *Addison and the north dallas corridor visitors guide and ADDISON-The Magazine of the North Dallas Corridor* contract renewal

Overview and Background *Addison and the north dallas corridor visitors guide* was born twelve years ago in response to the fact that the national visitor magazines that were being placed in- room in most of the Addison Hotels rooms featured advertising and editorial from restaurants and retailers far outside the Addison-North Dallas Corridor. By promoting these establishments and subsequent other markets our hotels were virtually asking visitors to our hotels to spend thier dollars outside the area. Equally important, is the fact that by having these publications in the rooms, the hotels were actually inviting the guests not to be repeat guests. This is because when a guest staying in one of our hotels sees an ad for a restaurant downtown or in Frisco for instance, he or she then takes a long cab ride, or drives his or her rental car to a whole other market and experiences the restaurants and retail there and probably notices that they have hotels there too and if he/she has a good experience it is likely they will want to stay closer to the good experience they had on their next trip to the DFW area. So recognizing this, Ron Whitehead approached me and asked if I thought a magazine that limited advertising for restaurants and retailers to only the Addison North Dallas Corridor could fly with financial assistance from the Town . After defining the areas and categories etc. we launched *Addison and the north dallas corridor visitors guide* by first getting the Addison hotels to commit to ours being the only publication displayed in the room. The publication was so well received by the Addison hotel community that we quickly added hotels in the North Dallas Corridor to the list that committed to displaying *Addison and the north dallas corridor visitors guide* in the their rooms exclusively. After a few years of the guide being a semi-annual publication in the hotels only, we realized the same concept applied to the vast number of people who work in the area but live elsewhere and that the publication with expanded distribution could entice those people to stay in the area to dine, shop and attend attractions near their work vs. going to their home market. We also had a growing demand from local residents who wanted the publication and again it made sense to encourage them to spend their dollars right here. So we developed another "local" cover titled *ADDISON-The Magazine of the North Dallas Corridor,* developed a local distribution network and increased the frequency to quarterly. Since then the response on the readership side has grown by leaps and bounds we have more requests for the magazine than we can fulfill but feel we have e prioritized this distribution to have maximum effect and efficiency.

Distribution The distribution is now 30,000 (plus) for each quarterly issue broken down as: Hotels, the largest group, with 10,000 copies local businesses/corporate (including relocation and real estate offices) approximately 7,000 copies, TOA and Surrounding upscale single family homes approximately 7,000 copies, local events approximately 1,500 copies, retail distribution approximately 2,500 copies and high rise, apts., condos approximately 3,000 copies. This distribution is broken down in detail on the **Circulation Summary and Publisher's Statement** on pages 10-13 of the attached Media Kit.

PO Box 12121 Dallas, TX 75225 phone 214-696-9525 Fax 214-696-9529

STATE OF TEXAS

Addison/North Dallas Advertising Agreement

COUNTY OF DALLAS

This Agreement is made as of _____, 2010 by and between the Town of Addison, Texas (the "Town") and Rodney Hand & Associates Marketing Communications, LP ("Hand").

WHEREAS, the Town is a duly incorporated municipality pursuant to the laws of the State of Texas; and

WHEREAS, Hand is a limited partnership doing business in the State of Texas; and

WHEREAS, Hand is the owner of two publications known as "Addison and The North Dallas Corridor Visitors Guide" (the "Visitors Guide") and the "Addison and The North Dallas Corridor Magazine" (the "Magazine"), and the Town desires to advertise in these Publications for the purpose of promoting the Town and the surrounding area to residents and visitors through distribution in hotel rooms in the Town and North Dallas area;

WHEREAS, the Town and Hand agree that these Publications shall be produced and distributed in accordance with the terms of this Agreement (including Exhibit A attached hereto and incorporated herein).

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Hand & Associates Marketing Communications do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.

2. Term. This Agreement shall be in effect from the date of execution hereof by the Town and shall terminate, except as otherwise provided for herein, upon completion of the fourth issue of the Publication, including its distribution.

3. Conduct of Publication. Hand shall be the owner/publisher of the Publications and the Town shall be considered an advertiser. The Visitors Guide shall be directed and distributed primarily to Addison and North Dallas hotels and visitors (as identified and agreed upon by the Town and Hand). The Magazine shall be directed and distributed primarily to Addison and North Dallas residential properties (as identified and agreed upon by the Town and Hand). The content of the Visitors Guide and of the Magazine will be similar, but the Magazine may include some additional information or features which is pertinent and unique to a residential audience.

4. Obligations, Representations and Warranties; Indemnification.

    A. Hand: Hand represents, warrants and covenants that:

(1) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce the Publication.

(2) In the production of the Publications, Hand shall comply with all applicable federal, state and local laws, rules and regulations.

(3) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.

(4) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.

(5)(a) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, HAND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, CLAIMS, 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 HAND'S PERFORMANCE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF HAND OR ANY OWNER, PARTNER, OFFICER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, GUEST, OR INVITEE OF HAND, OR ANY OTHER PERSON OR ENTITY FOR WHOM HAND MAY BE LIABLE UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(b) WITH RESPECT TO HAND'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), HAND 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.

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

(d) With respect to Hand's duty to defend set forth herein in subsection (a), Hand 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 Town shall have the right to approve the selection of counsel by Hand and to reject Hand's selection of counsel and to select counsel of the Town's own choosing, in which instance, Hand shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Hand, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Hand 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 Town 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 Hand, and Hand shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) The indemnity, hold harmless, and defense obligations of Hand set forth in this section or elsewhere in this Agreement shall survive the expiration or earlier termination of this Agreement.

(6) Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees assume the risk of all conditions whether dangerous or otherwise, in and about the premises

of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

B. Town: The Town represents, warrants, and covenants that:

(1) The Town shall pay Hand a sum of $26,250 for 18 pages of R.O.B. (Run of Book) advertising in the November 2010 issue of the Publications, $26,250 for 18 pages of R.O.B. advertising in the February 2011 issue, $26,250 for 18 pages of R.O.B. advertising in the May 2011 issue and $26,250 for 18 pages of R.O.B. advertising in the August 2011 issue of the Publications. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A.

(2) The Town shall pay Hand a sum of $1,687.50 for local distribution of each of the Holiday/Winter 2010/2011, Spring 2011, Summer 2011 and Fall 2011 Publications respectively to various locations approved by the City Manager. The area distribution will include the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Legacy, east to Hillcrest Road, and west to Marsh Lane. The various local distribution points shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.

5. Termination. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all services properly performed to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

6. Delays; Breach. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.

It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:

(i) The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice therefor, (and each such invoice shall include a summary statement of services rendered; and Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or

(ii) Hand fails to deliver the Holiday/Winter 2010/2011 issue of the Publications, in the required quantities (see Exhibit A) on or before November 27, 2010, the Spring 2011 issue in the required quantities (see Exhibit A) on or before March 1, 2011, the Summer 2011 issue in the required quantities (see Exhibit A) on or before May 24, 2011, or the Fall 2011 issue in the required quantities (see Exhibit A) on or before August 23, 2011; provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of $400.00 per day which the Town may deduct from the final amount then payable.

7. Notice: Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:	To Hand:
Town of Addison P. O. Box 9010 Addison, TX 75001 Attn: Lea Dunn Deputy City Manager	Rodney Hand & Associate Communications, LP PO Box 7444 Dallas, TX 75209 Attn: Rodney Hand

8. Assignment. This Agreement shall not be assigned or otherwise conveyed in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment or other conveyance of any portion of this Agreement. Any attempted assignment or other conveyance hereof by Hand shall be null, void and of no force or effect.

9. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the

other. No term or provision of this Agreement or any action in the performance hereof is intended nor shall be construed as making Hand the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

10. Texas Law to Apply. This Agreement and Exhibit "A" shall be governed by the laws of the State of Texas (without reference to its conflict of law provisions), and shall be performable and all compensation payable in Dallas County Texas. Venue under this Agreement lies in Dallas County, Texas.

11. Entire Agreement. This Agreement and the attached "Exhibit A" represents the entire and integrated agreement between the Town and Hand and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

12. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect.

13. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS	**RODNEY HAND & ASSOCIATES MARKETING COMMUNICATIONS, LP**
By: _____	By: _____
Ron Whitehead, City Manager	Rodney Hand, Principal

Attest: _____
Lea Dunn, City Secretary

EXHIBIT "A"

DESCRIPTION OF ADDISON/NORTH DALLAS PUBLICATIONS

A. Schedule: The (i) Holiday/Winter 2010/2011 issue of the Publications shall be completed and distributed by Hand on or before November 27, 2010, (ii) the Spring 2011 issue of the Publications shall be completed and distributed by Hand on or before March 1, 2011, (iii) the Summer 2011 issue of the Publications shall be completed and distributed by Hand on or before May 24, 2011, and the (iv) Fall 2011 issue of the Publications shall be completed and distributed by Hand on or before August 23, 2011.

B. Duties of Town: The Town shall:

1. Become the anchor advertiser for the Holiday/Winter 2010/2011, Spring 2011, Summer 2011 and Fall 2011 issue of the Publications. The Town shall be provided (a) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Holiday/Winter 2010/2011 issue of the Publications at a total cost not to exceed $26,250, (b) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Spring 2011 issue of the Publication at a total cost not to exceed $26,250, (c) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Summer 2011 issue of the Publications at a total cost not to exceed $26,250 and (d) 18 pages of R.O.B. advertising and editorial for the Fall 2011 issue of the Publications at a total cost not to exceed $26,250. Payments shall be due based on the following schedule:

For the Holiday/Winter 2010/2011 issue, a total of $26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Spring 2011 issue, a total of $26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Summer 2011 issue, a total of $26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed(a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Fall 2011 issue, a total of $26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

2. Submit to Hand in writing: changes and/or corrections to proofs or artwork, photos, and editorial layout. The Town shall return requests for proofing within 96 hours of receipt from Hand.

3. The Town agrees to permit Hand to review its collection of photographs, and agrees to grant to Hand a non-exclusive, royalty free license to use or reproduce such photographs, but solely as a part of the content of the publications which are the subject hereof; provided, however, that if any other person, firm or entity is the owner of any intellectual property rights in connection with any of such photographs, Hand is required to pay such fees, or enter into agreements with third parties as Hand and such third party may agree, without any cost or expense to the Town

4. Town authorizes Hand to produce the Town's logo, royalty free, but solely in connection with the publications which are the subject of this Agreement, and for no other purpose.

C. Duties of Hand: Hand shall provide:

1. On or before November 1, 2010 a timeline that details the elements of the Publications with key milestones.

2. A minimum 64-page Perfect Bound magazine of 22,500 copies each for the November 2010 issue, February 2011 issue, May 2011 issue and the August 2011 issue of the Publications.

3. Proofs of the editorial outline, story ideas, cover design, photos, artwork, and layout and input for approval by the Town. No editorial material of any nature will appear in the Publications unless it has been reviewed and approved by the Town.

4. The Town shall have prior approval of all promotional material including advertising rates pertaining to the Publications.

5. (a) With respect to the Visitors Guide, Hand shall be responsible for its distribution to the participating hotels and shall also verify placement of the Visitors Guide in guest rooms. Hand shall also provide placement copies of the Visitors Guide to hotels as needed. In addition, Hand shall also distribute the Visitors Guide to the following sources:

Participating Hotel Sales Offices
Corporate Concierges
Commercial Leasing Offices and Residential Real Estate Offices
Certain Advertisers

(b) With respect to the Magazine, Hand shall be responsible for its distribution to the residential properties identified and agreed upon by Hand and the Town, and Hand shall verify the distribution of the same.

(c) Hand shall provide to the Town a list of all sources to whom copies of the Publications are distributed.

6. As the anchor advertiser, the Town will be given copies for distribution.

7. Advertising sales area will be limited to:

South of Legacy East
of Marsh Lane North
of Harvest Hill West
of Hillcrest Road

Restaurants outside the area shall not be included.

No advertising will be accepted from any person, business or organization unless it meets the geographic limitations set out above without express permission from the Town of Addison Deputy City Manager or City Manager. The Town shall receive a list of advertisers one (1) week following the posted space reservation deadline for each issue.

8. The Town and Hand agree that the ratio of advertising to editorial shall not exceed 40% ads to 60% editorial.

9. The Town and Hand agree that the average ad rate for a run of space, full page/4 color insertion shall not exceed $3,500.00 and for exclusive positions, a full page/4 color insertion shall not exceed $4595.00.

Council Agenda Item: #R3

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance providing for increased prior and current service annuities for retirees and beneficiaries of deceased retirees of the Town of Addison, and establishing an effective date for the ordinance.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Employ High-Quality, Service-Oriented Personnel

ATTACHMENTS:

Description:	Type:
☐ TMRS Letter	Backup Material
☐ TMRS Ordinance	Backup Material

TMRS
TEXAS MUNICIPAL RETIREMENT SYSTEM

November 3, 2010

Via E-Mail

Ms. Passion Hayes
Director of Human Resources
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

Dear Passion:

We are pleased to enclose a model ordinance for your city to adopt:

70% CPI Increases to Annuitants
Ad Hoc (one time only basis)

This provision allows for annuity increases for your city's retirees and is based on a percentage of the Consumer Price Index (inflation index).

With the adoption of this additional benefit your city's full contribution rate for 2011 will be **15.31%**.

We will appreciate receiving a copy of this ordinance as soon as possible after adoption.

Please feel free to contact me at 1-800-924-8677 if you need additional information or assistance.

Sincerely,

Eric W. Davis
Deputy Executive Director

TMRS
P.O. Box 149153
Austin, Texas 78714-9153

www.TMRS.com

512.476.7577
Toll-Free 800.924.8677
Fax 512.476.5576

Plan Change Study

00007 Addison

GRID 2011
For Informational Purposes Only
Effective Date - January 1, 2011
Report Date - November 3, 2010

		Proposed Plans
Plan Provisions	**Current**	**1**
Deposit Rate	7.00%	7.00%
Matching Ratio	2 to 1	2 to 1
Updated Service Credit	100% (Repeating)	100% (Repeating)
Transfer USC **	Yes	Yes
Annuity Increase	0%	70%
20 Year/Any Age Ret.	Yes	Yes
Vesting	5 years	5 years
Contribution Rates	**2011**	**2011**
Normal Cost Rate	10.33%	10.33%
Prior Service Rate	4.47%	4.77%
Retirement Rate	**14.80%**	**15.10%**
Supplemental Death Rate	0.21% (A & R)	0.21% (A & R)
Total Rate	**15.01%**	**15.31%**
Unfunded Actuarial Liability	$12,128,519	$12,584,416
Amortization Period	30 years	30 years
Funded Ratio	81.42%	80.85%
Phase-In Total Rate	N/A	N/A
Stat Max	15.50%	15.50%
Study Exceeds Stat Max	No	No

**This is the addition to the Initial Prior Service Rate for USC for transfers. There were 37 eligible transfer employees on the valuation date.

TMRS-CPI

TEXAS MUNICIPAL RETIREMENT SYSTEM

AN ORDINANCE PROVIDING FOR INCREASED PRIOR AND CURRENT SERVICE ANNUITIES UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM FOR RETIREES AND BENEFICIARIES OF DECEASED RETIREES OF THE CITY OF ADDISON, AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE.

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

Increase in Retirement Annuities.

(a) On the terms and conditions set out in Sections 854.203 and 853.404 of Subtitle G of Title 8, Government Code, as amended (hereinafter referred to as the "TMRS Act"), the City hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the System to retired employees and to beneficiaries of deceased employees of the City under current service annuities and prior service annuities arising from service by such employees to the City. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of the annuity increase under this section is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by **70%** of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the increase under this Section.

(c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(d) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed hereunder.

(e) The amount by which an increase under this Section exceeds all previously granted increases to an annuitant is an obligation of the City and of its account in the Municipality accumulation fund of the System.

Effective Date. Subject to approval by the Board of Trustees of the System, this ordinance shall be and become effective on the 1st day of January 2011.

Passed and approved this the ____ day of _____, 2010.

ATTEST: **APPROVED:**

_____ _____

City Secretary or Clerk Mayor

Council Agenda Item: #R4

AGENDA CAPTION:

Presentation, discussion and consideration of approval to enter into an agreement with Shiroma Southwest to provide professional services for public relations and media publicity programs to promote certain special events and special projects for the Town of Addison.

FINANCIAL IMPACT:

Cost: $60,000 (Hotel Fund budgeted expense for special events work)

$65,500 (Funds are available in the Hotel Fund and the General Fund to accommodate special project expenses)

BACKGROUND:

Special Events - $60,000
For the last several years, the Town has utilized the services of Shiroma Southwest to promote the Town's major events as well as the smaller events and third party events sponsored by the Town. With the success of the Arts and Events District in the Addison Circle area, the number of events and the Town's exposure as a result of the events has continued to grow. Staff is very pleased with the results that Shiroma consistently provides and feels that the marketing and promotion of Addison is definitely enhanced as a result of their services. The fees for Shiroma's special events work has not increased over the previous three fiscal years.

Attached is a “Media Recap” for Addison's 2010 special events which measures Shiroma's effectiveness and successes.

New Special Projects - $65,500 In addition to their normal special events work, staff has requested Shiroma work directly with the City Manager's Office to develop and execute certain new special projects focused on promoting Addison and its business community. 2010-11 presents some unique and one time public relations needs for the Town. Super Bowl XLV offers an opportunity to showcase Addison as the destination for Super Bowl visitors. In addition, with the approaching opening of Visit Addison we believe there is a need to generate user and industry

awareness about the new facility. Both of these special projects offer unique promotional needs for us within a defined timeframe.

Three additional special projects we seek to engage Shiroma to perform for the Town include efforts to support Addison's restaurant, retail and business communication projects. Specifcally, Shiroma has proposed a plan to feature and promote Addison's reputation for fine dining, execute pilot programs to raise awareness of Addison's unique specialty retail and to build support for Addison's new on-line “Shop Local” business directory and related business-to-business connections. These special projects are detailed further in the attached agreement.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Shiroma Agreement	Backup Material

November 15, 2010

LETTER OF AGREEMENT BETWEEN THE TOWN OF ADDISON AND SOUTHWEST SPEAKERS BUREAU, INC., D.B.A. SHIROMA/SOUTHWEST, FOR EVENT PUBLIC RELATIONS AND PUBLICITY

This Letter confirms the agreement between the Town of Addison (Addison or the client) and Southwest Speakers Bureau, Inc., d.b.a., Shiroma/Southwest (the agency):

SERVICES:

A. Shiroma Southwest will develop and execute public relations and media publicity programs to promote the Town of Addison's events, as follows:

EVENTS ARE AS FOLLOWS:

Bookworm Bash
Resolution Run
Addison Perks
Out of the Loop Festival
WorldFest
Taste Addison
Summer Series
Kaboom Town!
Oktoberfest
Event Social Media

FEE: The fee for the Services provided by Shiroma Southwest for the above events is an annual fee in the amount of $60,000.00, with fees allotted proportionately to each event, based on the amount of hours required. The fee will be billed in 12 monthly increments of $5,000.00.

B. In addition to the Services provided by Shiroma Southwest as set forth in subsection A, above, Shiroma Southwest will also develop and execute public relations and media publicity programs to promote certain special projects and pilot programs for the Town of Addison, as follows (the scope and extent of the Services for each to be determined by client):

SPECIAL PROJECTS AND PILOT PROGRAMS ARE AS FOLLOWS:

Visit Addison (create media and promotional buzz and awareness of *Visit Addison* from the initial announcement, through construction phases to the ribbon cutting reaching not only consumers and the general public through broad-based media but targeting the hospitality, travel/tourism, arts/crafts and restaurant categories as well)

Super Bowl Promotions (create media awareness and generate attendance at activities related to Addison's role as an official Super Bowl host city and drive large, celebratory crowds to its hotel, restaurants and retail businesses)

Fine Dining PR (enhance Addison's reputation for destination dining, support additional traffic for food segment purveyors that have taken the risk to provide an unusual and unique food experience, utilize non-traditional food media and the blogging environment to drive traffic and win wider audience shares for Addison's specialty and fine dining)

Retail support (execute pilot programs to raise awareness of Addison's unique specialty retail through the use of non-traditional mini-events and in-store activities to enhance Addison's reputation as a community to find one-of-a-kind holiday and anytime specialty

retail; initial pilot programs planned for J. Doran Chocolatier and Kittrell Riffkind Art Glass)

Business connections (execute awareness programs to build support for Addison's new "Shop Addison" business directory on the Town website, establish other business networking forums or "meet up" groups to promote interaction among Addison's business community and to publicize such programs

FEES: Fees for the Services provided by Shiroma Southwest for the above special projects and pilot programs is an annual fee in the amount of $60,275.00, with fees allotted as follows to the special projects and pilot programs:

Visit Addison	$15,000.00 ($2,500 per month for six months)
Super Bowl Promotions	$17,500.00 ($3,500 per month for five months)
Fine Dining PR	$12,000.00
Retail Support	$12,000.00
Business connections	$ 9,000.00

ADDENDUMS: If the client elects to continue a special project or pilot program beyond its conclusion date, an addendum will be drafted to cover additional agency services required.

EXPENSE REIMBURSEMENT:
Expenses will be billed monthly. Agency will provide the client with a budget of anticipated charges. Client agrees to provide any necessary collateral pieces, if possible, to reduce the need for additional expenses. Agency will be reimbursed for all expenses pertaining to the programs, which may include copies, long distance phone, faxes, postage, printing, messenger services, overnight deliveries, press kit materials and assembly, photo reproduction, print and electronic clipping services, etc. All outside purchases are made only under the authorization of the client and insomuch, the client agrees to accept full responsibility for all obligations and holds the agency harmless from all liability and payment of such charges as ordered under the client's authorization.

All amounts are due in Dallas, Dallas County, Texas. Balances that are more than sixty (60) days past due are subject to a finance charge of 1.33% per month (16% annually) or the current amount allowable by law.

This agreement is effective immediately upon signing and shall remain in effect through October 31, 2011, subject to the right of either party to terminate this Agreement upon giving the other party at least thirty (30) days notice of termination.

FOR TOWN OF ADDISON	**FOR SOUTHWEST SPEAKERS BUREAU, INC. D.B.A. SHIROMA/SOUTHWEST**
BY:_____	**BY:**_____
ITS:_____	**ITS:** _____
DATE: _____	**DATE:** _____

Council Agenda Item: #R5

AGENDA CAPTION:

Presentation, discussion and consideration of approval authorizing the City Manager to renew the Town's health insurance contract with Blue Cross/Blue Shield of Texas (BCBSTX).

FINANCIAL IMPACT:

$150,000

BACKGROUND:

In 2004, the Town entered into a contract with BCBSTX to provide group health insurance coverage for its employees. Over the last several years, Town staff and BCBSTX have worked together closely in monitoring trends and medical claim history data. In 2006, the Town decided to pursue a proactive wellness strategy to promote active and healthy lifestyles for its employees though the A-HIT (Addison Health Information Team) Wellness Program. The program has had a significant impact on increasing awareness and promoting wellness for Town employees. Also, it has increased the Town's ability to negotiate with BCBSTX to keep medical insurance cost coverage down. In fact, the Town did not see a rate increase in calendar years 2008 and 2009.

However, over the couple of years BCBSTX and the Town has seen an increase in the number of large medical claims. After several meetings with BCBSTX, the Town was able to negotiate the proposed rate increase of 17.7% to 9.0% for calendar year 2011.

History of Renewal Increases

2005 14.33%2006 23.80%
2007 7%
2008 0%
2009 5.3%; negotiated down to 0%2010 17.0%; negotiated down to 10%2011 17.7%; negotiated down to 9.0%The Town is committed to promoting active and healthy lifestyles for Town employees and will continue to focus on sustainable health

insurance options.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Employ High-Quality, Service-Oriented Personnel

ATTACHMENTS:

Description:	Type:
No Attachments Available	

Council Agenda Item: #R6

AGENDA CAPTION:

Presentation, discussion and consideration of approval of the assignment of the tenant's interest in a lease between the Town of Addison as landlord, and Twin City Hotel, LLC, as tenant, and a related option contract, to Praveen Katapally and/or assigns, regarding property located at 4460 Belt Line Road (Clay Pit Restaurant).

FINANCIAL IMPACT:

The lease agreement calls for the Clay Pit to pay the Town a minimum monthly lease of $6,375.00 plus three percent of gross sales that would be in excess of the minimum lease. Currently, the tenants are two months in arrears.

BACKGROUND:

The Town of Addison entered into a 20-year lease agreement in June 1991 with Prufrock Restaurants that desired to operate a Black Eye Pea restaurant. In 1997 the Town approved assignment of the lease to Phoenix Restaurant Group (PRG) which operated the restaurant until 2001 when PRG filed for bankruptcy. Pursuant to the bankruptcy order, PRG entered into agreement with Amar Unlimited Inc. (Amar) to open a new restaurant on the property by the name of Clay Pit. In 2005, the Town was approached by Amar to amend the agreement to lower the minimum monthly lease for 12 months from $5,416.67 per month to $2,708.34, then recover the lost lease amount with a higher minimum lease of $6,375.00 until September 2011, and then revert to the monthly lease envisoned in the original agreement of $5,833.33. The amended lease also extended the lease agreement from June 2011 to December 2012.

The Clay Pit restaurant has struggled almost since the day of its acquisition of the property. The tenants are currently two months' in arrears to the Town and seven months in arrears to the owner of the building, GE Capital. On Monday, November 15, the Finance staff received a request from the restaurant owners to sell their interests to another party. Attached is their proposal. Orally, they have committed to pay all amounts in arrears to both the Town and GE Capital as a condition of the assignment. Staff has

reviewed the materials that have been submitted but have made no determination as to the accuracy of the materials, nor whether the assignment of a lease that expires in two years represents the highest and best use of the property.

RECOMMENDATION:

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner, Provide For A Diversified Business Climate, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

ATTACHMENTS:

Description:	Type:
Clay Pit Assignment	Backup Material
Amendment to Current Lease w/Lease	Backup Material
Option Contract	Backup Material

CITY OF ADDISON

November, 12, 2010

To Whom It May Concern:

We hereby formally would like to request an appearance at the November 23, 2010 City Council meeting and be placed on the agenda regarding the possible purchase of the business known as the Clay Pit Restaurant, 4460 Beltline Road, Addison, TX.

We have agreed with the Seller on a purchase price for the Assets and Trade Name for said business contingent upon due diligence and approval of assignment of the existing lease. We are willing to assume the lease "As Is" with the same right for the renewal options as outlined in the lease.

We have a Letter of Intent to purchase the Assets and Trade Name for $150,000. with $50,000. down payment and the balance to be paid only through the profits generated by the restaurant. This allows us to have ample working capital to turn the restaurant around and make it profitable once again. Seller is confident with our experience and hands on operational skills that we can make a go of the restaurant and therefore is willing to take the chance on the pay out of the balance owed through performance and possibility.

Sincerely,
Praveen Katapally
Praveen Mallu
Pradeep Mukka
Kalyan Akkasani

CONTACT NAMES ...RE: CLAY PIT RESTAURANT, ADDISON, TX

Fred Venners, Broker/Agent
972-867-0039

Navin Reddy, Seller Contact
972-342-2666

Praveen Katapally, Buyer Contact
972-983-1500

LETTER OF INTENT

We, hereby submit a Letter of Intent to purchase a business know as: CLAY PIT, 4460 Beltline Road, Addison, TX 75001 as follows:

Purchase Price: $150,000

Down Payment: $50,000 cash at closing

The balance of $100,000 bearing 6% interest to be paid monthly on 50% of net profit generated by the restaurant until said balance is paid in full. Net profit being defined as profit after expenses, before interest and taxes.

Purchase to include: Furniture, Fixtures, Equipment, Trade Name, and Leasehold rights to be delivered free and clear of all liens and encumbrances.

Upon approval of lease assignment and further due diligence we will draft a formal Offer to Purchase and Sale Agreement setting forth the terms and conditions of the proposed purchase and the entity (LLC) who is going to purchase said business.

SELLER

Twin City Hotel, LLC

by: Rajakumar 11/10/10

PURCHASER

Praveen Katapally and/or assigns

by: K.P. 11-10-10

FINANCIAL STATEMENT

NAME HARINI KALYAKUNTLA

ADDRESS 9019 BOTTLEBRUSH LN

PHONE NUMBER

City IRVING State TX Zip 75063

CELL NUMBER 215-869-8007

STATEMENT DATE

PH#
2158698007
9729831500
9729834947
956 220 4194

ASSETS		LIABILITIES	
Cash In the Following Banks	$	Notes Payable to Banks	
HARINI / BOA / EECU	$ 38,000	1. Due to:	$
PRAVEEN / CHASE / BOA	$ 35,000	Collateral:	
PRAVEEN / CHASE / BOA	$ 45,000	2. Due to:	$
KALYAN / CHASE / BOA	$ 35,000	Collateral:	
	$	3. Due to:	$
Notes Due To Me		Collateral:	
Secured by Real Estate	$	Other Notes Payable - Secured	
Secured by Other Collateral	$	1. Due to:	$
Unsecured (Collectible)	$	Collateral:	
Other Receivables	$	2. Due to:	$
Stocks and Bonds		Collateral:	
Marketable Stocks	$ 84,000	Other Notes Payable - Unsecured	
Other Stocks	$	1. Due to:	$
Cash Value Life Insurance	$	2. Due to:	$
Automobiles		Taxes Owing	
yr 2008 model BMW-X5	$ 60,000	Income Taxes	$
yr 2006 model BMW-330I	$ 38,000	Other Taxes	$
Real Estate		Life Insurance Policy Loans	$
Homestead (2-HARINI	$ 686,000	Due on Automobiles	$ 55,000
Other 2-KALYAN)	$	Owing on Real Estate (1-HARINI	
Other Assets (describe)		Due on Homestead 2-KALYAN)	$ 540,000
GOLD	$ 48,000	Due on Other (INDIA-PROPERTIES)	$ 100,000
NOTE :- PROPERTIES IN INDIA	$ 700,000	Other Liabilities (describe)	
	$	Personal Bills	$ 28,000
	$		$
	$		$
	$		$
TOTAL ASSETS	$1,763,000	TOTAL LIABILITIES	$723,000
		NET WORTH (total assets minus liabilities)	$1,040,000

CONTINGENT LIABILITIES		ANNUAL INCOME	
As Endorser, Co-maker or Guarantor	$	Salary (ALL)	$ 410,000
On Leases or Contracts	$	Commissions and Bonuses	$
		Dividends	$

The above financial statement, which is submitted for the purpose of evaluating credit worthiness for leasing retail space and a true, complete and correct representation of my financial condition as of the date above.

I hereby authorize landlord to run a credit check: S.S.#

Date: 11/14/10 Signature:

Clay-Pit
Proposed Business Plan

- - Adds value to existing Business Model

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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 managing partners of the existing concept, Praveen Katapally, Harini Kalvakuntla, Pradeep Mukka, Kalyan Akkasani are seeking to lease the current location of the restaurant.

The proposed General Manager for this restaurant would be Harini Kalvakuntla, whose family owns a chain of Banquet/Conference Halls named" MNR" in Hyderabad India for past 18 years and she has extensive exposure to Hospitality industry and Customer Service areas.

The Kitchen/Catering Manager for Clay Pit will be Praveen Katapally. He has been the in charge of Catering and Kitchen Operations for the famed Indian Restaurant "Mayuri' located in Irving TX for the past 6 years. Because of which, he has gained valuable exposure to the Indian Restaurant Industry in DFW Metropolis as well as others parts of Texas State. This whole effort would be backed by Lalith Thota, MD of "Mayuri" restaurant who happens to be a cousin brother of Praveen Katapally.

The other two investors, Pradeep Mukka and Kalyan Akkasani, are highly skilled Consultants who have extensive experience in the areas of Business Development & Customer Related activities. They are highly motivated professional and would immensely contribute towards this Joint Venture.

The collective years of experience between the above people exceeds 20 years in the restaurant industry. Their combined efforts to continue the success of Clay Pit would serve 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. ***They have designed a Strategic Plan to revive Clay Pit by making significant modifications to Clay Pit's current business model. With addition of Praveen Katapally's existing networks of Clientele, aggressive marketing efforts will be undertaken to offer Catering service to the surrounding businesses, hospitals and residential events. They fully understand the untapped potential of***

Clay pit to attract new customers in the vibrant neighborhood of Addison, TX and plan to add Specialty Indian Cuisine like South Indian, Indo-Chinese and Mughlai entrees to the current menu to increase sales and improve the current bottom line.

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

Location

Clay Pit will be located at 4460 Belt Line Rd. Addison, TX 75001.

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 $######### to open along with a reserve of $#######. Funding for the venture will be entirely provided by contributions from the partners. The proposed sources of funds are as follows: SEE FINANCIALS.

Source of Funds	Investment Type	Amount
Managing Partner – Harini Kalvakuntla	Capital contribution	$ 38,000.
Managing Partner – Praveen Katapally	Capital contribution	$ 35,000.
Managing Partner – Pradeep Mukka	Capital contribution	$ 45,000
Managing Partner – Kalyan Akkasani	Capital contribution	$ 35,000
Total		

MORE IF NEEDED.

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.

Managing Partners – Harini Kalvakuntla, Praveen Katapally, Pradeep Mukka and Kalyan Akkasani

Harini Kalvakuntla graduated with an MSc in Computer Sciences from Ambedkar University in India. She was involved with her family business of Leasing, Renting and Managing Banquet/Conference Halls. She has the needed oversight and hands on experience for operational and personnel tasks.

As the **General Manager** She 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.

Praveen Katapally graduated with an MS in Management Information Systems from Texas A&M and has successfully managed Catering/Kitchen Operations for several years and has developed a large network of satisfactory clients and will be also responsible for Marketing, Business strategy and growth.

As **Kitchen Manager**, Praveen Katapally 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.

Pradeep Mukka graduated with an MS in Computer Sciences, from Texas A&M. He is currently working as a Enterprise and Resources Planning Consultant and his exposure to Business Analysis and Information systems would contribute extensively towards the planned objectives.

Kalyan Akkasani graduated with an MS in Computer Sciences, from Laredo University. He has enormous exposure to Business Intelligence systems and his acquired skills in the areas of Data Mining and Analytical reporting would help to analyze and identify potential growth opportunities.

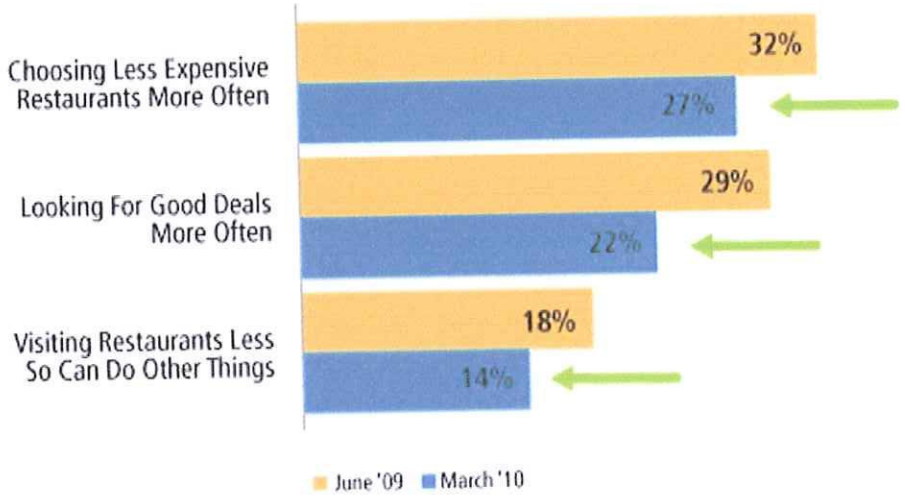
Market Analysis

Macro Economic Trends

According to the National Restaurant Association's 2010 Restaurant Industry Forecast, With the economic downturn easing, the restaurant industry is expected to show gradual improvement in 2010, Restaurant industry sales are projected to reach $580 billion this year, a 2.5 percent increase in current dollars over 2009 sales. When adjusted for inflation, 2010 sales will be essentially flat, which is an improvement over the 1.2 and 2.9 percent negative growth in real sales that the industry experienced in 2008 and 2009, respectively. Despite job losses in 2009, the restaurant industry still outperformed the national economy. Job growth is expected to resume in 2010, and the industry is projected to add 1.3 million career and employment opportunities by 2020.

Restaurant Growth Prospects

Signals are emerging that the restaurant industry is poised for a positive turnaround, according to The NPD Group, a research firm that tracks consumer usage of foodservice outlets. The firm measured same store sales trends for 47 QSR and family-style chains in March. What it saw was increases compared to a year-ago in four of the past six weeks, a trend not seen in 11 months.
In addition to same store sales, another NPD study shows that consumer behavior patterns at restaurants are shifting. Relatively fewer consumers are saying that they are trading down restaurant selection based on price. Fewer consumers are searching for better deals more, and fewer are sacrificing a trip to the restaurant compared to a year ago.



Source: NPD, Light at the End of the Tunnel report, updated March 2010

DFW – The Growth Story

Dallas–Fort Worth received the largest influx of residents in the country in 2009, according to the U.S. Census Bureau. The 6.45 million people living in DFW as of July 1, 2009, marked a 2.3 percent increase from 2008. The area's raw influx of 146,530 people

was more than any other region in the nation as the state added jobs while most of the country was shedding them.

Addison Demographics

Over the years, Addison has become Dallas Area's most poplular destination for business, entertainment, shopping, wining and dining. It boasts of 170 restaurants and 22 hotels and has established as a top spot for both visitors and residents and boasts of live music and comedy shows. The Town of Addison continues to prosper, while 90% is built out, prime real estate remains and redevelopment opportunities at and near the Addison Airport are anticipated for the future. New construction is underway which will add another 5400 residential units to the city. It continues to add businesses and employment. Some of the top employees as of 2009 are:
Mary Kay Cosmetics, Inc.
Bank of America
Barrett Burke Wilson & Castle
Concentra Health Services
Hotel Inter-Continental Dallas
United Surgical Partners
Town of Addison

The average Addison resident is young, white collar professional who is single, highly educated and had a median household income of $57,112 which is expected to grow to $62,506 in 2011. There is a population of close to 50,000 employed during day time and also a day time population typically reaches up to 100,000 a day. Hence there is huge demand for restaurant during working days. The weekends attract a huge crowd for entertainment and dining.

The opportunity

Given the DFW growth trends, the popularity of the Addison area, we believe that there is a huge demand for restaurants, especially a restaurant like Clay Pit which has been in the business for years. While the business can be run more efficiently and better of marketing strategy would be needed to achieve the full potential of the restaurant, there is no doubt that Clay Pit is positioned well to grab a significant share of the patrons for the restaurant in the Addison area. With a good campaign, we believe we can attract significant population from the neighboring Dallas and Plano counties. A good market strategy that targets the business and employment population during the week day will be a huge plus for the restaurant; we don't believe this is being done today. In all we see a huge potential to earn revenue for the restaurant and the city for years to come.

Target Market

Other than the above stated Employments Providers in Addison, We also anticipate that Clay Pit will appeal to a broad base of consumers especially the high-tech industry employees working in the Dallas, and Richardson. An additional 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. do provide an excellent opportunity to realize.

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

Currently Clay Pit has established a brand value by serving great food, providing friendly service and employing successful marketing plans to retain clients.

New Management

The new management believes, there is huge untapped market for Indian Cuisine in Addison, because of a fewer Indian Restaurants. The team would infuse fresh ideas and also implement aggressive Marketing & Advertising Techniques to attract new segments of clients by value additions to the current menu, expansion of catering operations, and promotion of socio-cultural events and effective utilization of Print/Broadcast media services, to reach unexplored target customers.

Management will endeavor to 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 current tactics, which are being utilized 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 signup 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.

Operations

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 continue employing 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	2	
General Manager	1	
Kitchen Manager	1	
Line Cooks	4	
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:

SEE FINANCIALS !

Source of Funds	Investment Type	Amount
Managing Partner – Harini Kalvakuntla	Capital contribution	$
Managing Partner – Praveen Katapally	Capital contribution	$
Managing Partner – Pradeep Mukka	Capital contribution	$
Managing Partner – Kalyan Akkasani	Capital contribution	$
Total		

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.

Sales Projections

Target an estimated increase of 20 % sales in the immediate 6 months, below is an overview of future projection.

Pro forma Gross Profit:

The sales as of now are 70K per month on the overall average of this year. We would like to increase sales by doing more caterings to Indian Community and also by increasing Buffet and dinner sales by attracting Indian community to restaurant by increasing menu.

The projected sales per month in next year are 84K. If the sales increases the consumption of the food increases, but we see lot of wastage in food as of now in the Restaurant and we see lot scope to save the raw material and want to order food according to the demand. So we are trying to increase our Raw material price by only 10% even though we have 20 % sales increase. The cost of goods is now around 15k per month so the next year it will be around 16.5k per month.

So the pro gross profit will be 84 – 16.5 = 67.5k.

Pro forma total expenses

We would like to keep same work force and expenses, as the increase in sales do not increase any of our expenses

Labor = 20K
Expenses like rent, water, gas, electricity, internet and etc = 20K

Total expenses 20 + 20 = 40k

Pro forma profit before taxes

67.5 – 40k = 27.5k

Pro forma taxes

Taxes on 27.5 on calculating around 9% taxes are 3k.

Pro forma Profit after taxes is

27.5 – 3 = 24.5k

Menu

We plan to introduce few of the Indian Specialty food Cuisines like "South Indian, Indo-Chinese & Mughlai" in addition to the current menu being served at the restaurant.

Current_Menu.pdf

STATE OF TEXAS §
§ **AMENDMENT TO LEASE**
COUNTY OF DALLAS §

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: [illegible]

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 form 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 emancipate 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 devises 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 untenantable 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 majure.

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, <u>less</u> 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 aforedescribed, 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	Tenant
Town of Addison Attn: City Manager P. O. Box 144 Addison, TX 75001	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: [signature]

TENANT:

PRUFROCK RESTAURANTS, INC.

Date: June 12, 1991

By: Theodore J. Pgal

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

By:_____
Ron Whitehead, City Manager

ATTEST:

By:_____
Carmen Moran, City Secretary

AMAR UNLIMITED, INC.

By:_____

Printed Name:_____

Title:_____

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.

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 untenantable 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 (iv) 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 forgoing 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 reasonably 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:_____
By:_____	
Ron Whitehead, City Manager	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 o 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).

Council Agenda Item: #R7

AGENDA CAPTION:

Presentation, discussion and consideration of approval of a resolution of the Town of Addison authorizing the Cities Aggregation Power Project, Inc. (CAPP) to negotiate an extension (to continue until December 31, 2018) to the current electric supply and necessary related services agreement with Next Era for a fixed price per kwh that is lower than contract rates for 2011-2013; approving CAPP contracting with Next Era and authorizing the Town's execution of a contract with CAPP for the Town's electricity needs for the period beginning approximately January 1, 2011 and extending up to December 31, 2018; committing to budget for energy purchases and to honor the Town's commitments to purchase power through CAPP for its electrical needs through December 31, 2018.

FINANCIAL IMPACT:

The 2010-11 budget anticipates spending a total of $1,289,000 on electric power. A one cent decline in the generation component of the Town's electric purchases would result in annual savings of about $106,000.

BACKGROUND:

The Town of Addison is a member of the Cities Aggregation Power Project (CAPP), a consortium of over 100 local governments who aggregate their electric power load to obtain optimal pricing of electricity. The Town has obtained its electric power through CAPP since the advent of the deregulated electric market in 2002 and has saved hundreds of thousands of dollars over the years on its electric power purchases. In December 2008 electric prices began to drop from the historic highs experienced the previous two years and CAPP negotiated a five-year power supply agreement with Next Era, formerly Florida Power and Light. Electric power pricing in Texas is linked to the price of natural gas and since 2008, the price of gas and electric power has continued to decline. For this reason CAPP and its consultants have approached the market to obtain pricing of power beyond the current agreement's expiration in December 2013. Next Era responded to this solicitation with a “blend and extend” proposal that would offer immediate discounts of an estimated one-cent per kilowatt hour (KwH) and provide

favorable pricing through 2018. The Town's current rate is 7.895 cents per KwH, excluding bypassable charges levied by Oncor, the transmission and distribution company.

The CAPP board believes the current market for electric power is favorable for extension of the power supply agreement. At this point in time, natural gas prices are low and stable and there is excess capacity. Whether natural gas prices will remain low and stable through 2013 depends a great deal upon the future of shale gas extraction. If environmental factors such as potential groundwater contamination limit the production of shale gas or if the economy recovers and industrial and electric company demand for gas increases, natural gas prices will rise. Most analysts of population growth also predict significant expansion of the population of Texas. How soon such growth will cause demand for electricity to grow faster than supply is unknown, but some forecasts suggest that the reserve margins for generation of electricity may dip below a reasonable level by as early as 2013. If that happens, electric prices will rise above current levels and going to the market for pricing of power after the 2013 agreement expires could put cities in jeopardy of paying significantly higher rates for electricity.

The attached resolution authorizes CAPP to negotiate a long-term electric supply contract with Next Era and to execute that agreement if CAPP finds that the long-term price can be locked in at rates lower than what the Town is currently paying.

The Texas electric market has witnessed incredible volatility over the past five years in electric pricing. It is doubtful electric prices will be lower than they are currently and the Town should take advantage of locking in prices for the next eight years that are lower than what are currently in effect.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:	Type:
CAPP Resolution	Backup Material

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN EXTENSION TO THE CURRENT ELECTRIC SUPPLY AND NECESSARY RELATED SERVICES AGREEMENT WITH NEXT ERA FOR A FIXED PRICE PER kWh THAT IS LOWER THAN CONTRACT RATES FOR 2011-2013, SAID EXTENSION TO CONTINUE UNTIL DECEMBER 31, 2018; APPROVING CAPP CONTRACTING WITH NEXT ERA AND AUTHORIZING THE CITY MANAGER OR OTHER DESIGNATED CITY OFFICIAL TO SIGN A CONTRACT WITH CAPP FOR THE TOWN'S ELECTRICITY NEEDS FOR THE PERIOD BEGINNING JANUARY 1, 2011 OR AS SOON AFTER FINALIZATION OF A CONTRACT AS POSSIBLE AND EXTENDING UP TO DECEMBER 31, 2018; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE TOWN'S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS THROUGH DECEMBER 31, 2018; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (City) is a member of Cities Aggregation Power Project, Inc. (CAPP), a nonprofit political subdivision corporation dedicated to securing electric power for its 102 political subdivision members in the competitive retail market; and

WHEREAS, CAPP negotiated favorable contract terms and a reasonable commodity price for delivered electricity since 2002 resulting in significant savings for its members; and

WHEREAS, the City's current contract for power with Next Era arranged through CAPP expires December 31, 2013; and

WHEREAS, the CAPP Board of Directors is currently considering a blend and extend contract with Next Era with indicative retail energy prices that will reduce the prices under the current contract for the next three years and extend a fixed price for energy through December 31, 2018; and

WHEREAS, the current contract is a master agreement between CAPP and Next Era endorsed by contract with individual CAPP members; and

WHEREAS, CAPP must be able to commit contractually to prices in a blend and extend contract amendment within a 24-hour period in order to lock-in favorable prices; and

WHEREAS, experiences in contracting for CAPP load since 2002 demonstrated that providers demand immediate response to an offer and may penalize delay with higher prices; and

WHEREAS, suppliers demand assurance that CAPP will pay for all contracted load; and

WHEREAS, the City must assure CAPP that it will budget for energy purchases and honor its commitments to purchase power for its electrical needs through CAPP for the period beginning January 1, 2011 and extending through December 31, 2018; and

WHEREAS, CAPP intends to continue to contract with Next Era (power supply) and Direct Energy (billing, administrative and other customer services); and

WHEREAS, the current contractual relationships between CAPP and Next Era and Direct Energy have been beneficial and cost effective for CAPP members and the City.

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

Section 1. That the CAPP Board and its consultants and advisors are agents authorized to negotiate for the City's electricity needs as a member of CAPP and extend the current supply agreement through December 31, 2018.

Section 2. That the City approves CAPP extending its current contract with Next Era for the supply of electric power and related, necessary services for the City for a term to begin January 1, 2011 or as soon after finalization of a contract as possible and extending up to December 31, 2018, so long as the extension results in savings over the current contract term of 2011-2013 and results in fixed prices through December 31, 2018.

Section 3. That the City Manager or other designated city official will execute a contract with CAPP that permits the Chairman of CAPP to sign a Commercial Electricity Supply Agreement ("CESA") for the City's electricity needs and related, necessary services beginning January 1, 2011 and extending up to December 31, 2018, as a member of CAPP and commits its load for the same period pursuant to the contract recommended and approved by the CAPP Board of Directors, provided that the energy price to be paid per kWh in 2011-2013 is less than the current contract price for 2011-2013 resulting in savings for the City and that the fixed price for the period 2011-2013 will continue through December 31, 2018.

Section 4. That the City will budget and approve funds necessary to pay electricity costs proportionate to the City's load under the supply agreement arranged by CAPP and signed by the Chairman of CAPP on behalf of all CAPP members for the term beginning January 1, 2011 and extending up to December 31, 2018.

Section 5. That a copy of this Resolution shall be sent to Mary Bunkley with the City Attorney's office in Arlington and Geoffrey M. Gay, legal counsel to CAPP.

Section 6. That 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 the 23rd day of November, 2010.

_____
Joe Chow, Mayor

ATTEST:

By:_____
Lea Dunn, City Secretary

Council Agenda Item: #R8

AGENDA CAPTION:

Presentation, discussion and consideration of approval of ordinances to re-appoint Larry Dwight as presiding municipal judge, and U.H. (Woody) Specht and Albert Fenton as alternate municipal judges, to the Addison Municipal Court of Record, and of agreements for services with each of the said judges.

FINANCIAL IMPACT:

Judge Dwight's salary is $84,068.40 annually. Judges Specht and Fenton are paid $100 per hour and typically work weekends, holidays or when Judge Dwight is not available. They typically average between 15-20 hours per month. Funds are budgeted in the Municipal Court budget.

BACKGROUND:

Judge Dwight has served as a municipal court judge for the past twenty-four years, specifically serving as the Presiding Judge of the Addison Municipal Court for the last ten terms. Judge Specht and Judge Fenton have both served eight full terms with the Addison Municipal Court. The term length for judgeship of the Addison Municipal Court is two years.
For the past eight years, the Court has worked under an arrangement whereby Judge Dwight works an average thirty (30) hours per week to assist people who appear at Municipal Court window to resolve their cases. This is necessary because some cases require some judicial discretion to handle them legally, judiciously, and efficiently. If their case is resolved, then these individuals do not have to return for a scheduled court date. This process has streamlined the Court's docket and made the situation easier and less stressful for citizens. This arrangement has worked very well and allows the Court to facilitate the efficient processing of cases.

On weekends, holidays, and the few times when Judge Dwight is unavailable, either Judge Specht or Judge Fenton are called in to process defendants who have been arrested and are being held in the Addison Jail.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

ATTACHMENTS:

Description:	Type:
Ordinance for Judge Dwight	Ordinance
Agreement for Judge Dwight	Backup Material
Ordinance for Judge Specht	Ordinance
Judge Specht Agreement	Backup Material
Ordinance for Judge Fenton	Ordinance
Agreement for Judge Fenton	Backup Material

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, RE-APPOINTING LARRY DWIGHT AS PRESIDING MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A COMPENSATION AGREEMENT WITH LARRY DWIGHT TO PERFORM SERVICES AS A MUNICIPAL JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that a Municipal Judge is necessary to perform the judicial functions of the Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that Larry Dwight should be re-appointed as presiding Municipal Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that a compensation agreement should be entered into with Larry Dwight to perform services as Municipal Judge of Addison Municipal Court of Record No. 1.

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 and made a part hereof for all purposes.

Section 2. Appointment. The City Council of Addison hereby re-appoints Larry Dwight as presiding Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on December 15, 2010, and shall end on December 31, 2012.

Section 3. Authorization to Execute. The Compensation Agreement by and between the City and Larry Dwight regarding Larry Dwight's service as the presiding Municipal Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached

hereto, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the said Compensation Agreement on behalf of the City.

Section 4. Effective Date. This Ordinance shall take effect from and after its adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ____ day of _____, 2010.

_____
Joe Chow, Mayor

ATTEST:

_____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

_____
John Hill, City Attorney

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

AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as "City") and LARRY DWIGHT (hereinafter referred to as "Dwight").

I.

The City does hereby appoint Dwight as Municipal Judge of Addison Municipal Court of Record No. 1 for a term of two (2) years. Said term shall commence on December 15, 2010 and will expire December 31, 2012.

II.

In consideration for such services, Dwight shall receive:

1. a biweekly (that is, once every two (2) weeks) salary in the amount of $3,233.40 starting December 15, 2010, paid in the same manner as are other employees of the City;

2. the City's obligations are funded from current funds.

III.

Dwight may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability. Dwight shall be required to provide thirty (30) days' notice of resignation.

IV.

All other provisions of the City Charter relating to removal from office shall be applicable.

V.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions. The obligations and requirements of the parties hereto are performable in Dallas County, and any dispute relating to this Agreement shall be tried in Dallas County.

VI.

The Parties further agree that Dwight may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VII.

This Agreement is executed on behalf of the City by the City Manager or his designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

VIII.

This instrument shall be the entire agreement and understanding between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the ____ day of _____, 2010, in Addison, Dallas County, Texas.

THE TOWN OF ADDISON, TEXAS

_____ By:_____

LARRY DWIGHT Ron Whitehead, City Manager

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, RE-APPOINTING U. H. (WOODY) SPECHT AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A COMPENSATION AGREEMENT WITH U. H. (WOODY) SPECHT TO PERFORM SERVICES AS AN ALTERNATE MUNICIPAL JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that an alternate Municipal Judge of Addison Municipal Court of Record No. 1 is necessary to perform certain judicial functions in the Town of Addison; and

WHEREAS, the City Council of the Town of Addison has determined that U. H. (Woody) Specht should be re-appointed as presiding Municipal Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that a compensation agreement should be entered into with U. H. (Woody) Specht to perform services as an alternate Municipal Judge of Addison Municipal Court of Record No. 1.

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 and made a part hereof for all purposes.

Section 2. Appointment. The City Council of Addison hereby re-appoints U. H. (Woody) Specht as alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on December 15, 2010 and shall end on December 31, 2012. U. H. (Woody) Specht may not serve beyond the said term except upon the express authorization of the City Council, and this provision shall control over any law, rule, or regulation in conflict herewith.

Section 3. Authorization to Execute. The Compensation Agreement by and between the City and U. H. (Woody) Specht regarding U. H. (Woody) Specht's service as an alternate Municipal Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached hereto, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the said Compensation Agreement on behalf of the City.

Section 4. Effective Date. This Ordinance shall take effect from and after its adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2010.

_____
Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By:_____
John Hill, City Attorney

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

AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as "City") and U.H. (WOODY) SPECHT (hereinafter referred to as "Specht").

I.

The City does hereby appoint, Specht as Alternate Judge of Addison Municipal Court of Record No. 1 for a term of two (2) years. Said term shall commence on December 15, 2010 and will expire December 31, 2012.

II.

As Alternate City Judge, Specht shall perform such functions as arraignment of prisoners and any other functions requested of him to assist the Municipal Judge. Specht is employed on an on-call basis and is expected to be reasonably available to perform his role as Alternate Judge as requested by the City. Specht is required to provide his own robe. Specht is further required to spend a reasonable amount of time participating in judicial continuing legal education programs so as to enhance his abilities to perform as Alternate City Judge and to enhance the stature of such office.

III.

In consideration for such services, Specht shall receive:

1. compensation of One Hundred and No/100 Dollars ($100.00) per hour, with a minimum of one hour's compensation to be paid to Specht per sitting in his judicial capacity; and

2. the City's obligations are funded from current funds.

IV.

The City makes no warranties or representations as to the amount of work Specht will receive under this Agreement.

V.

Specht may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability. Specht shall be required to provide thirty (30) days' notice of resignation.

VI.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions. The obligations and requirements of the parties hereto are performable in Dallas County, and exclusive venue for any dispute relating to this Agreement shall be in Dallas County.

VII.

The Parties further agree that Specht may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VIII.

This Agreement is executed on behalf of the City by the City Manager or his designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

IX.

This instrument shall be the entire agreement and understanding between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the ____ day of _____, 2010, in Addison, Dallas County, Texas.

THE TOWN OF ADDISON, TEXAS

_____ By:_____

U.H. (WOODY) SPECHT Ron Whitehead, City Manager

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, RE-APPOINTING ALBERT B. FENTON AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A COMPENSATION AGREEMENT WITH ALBERT D. FENTON TO PERFORM SERVICES AS AN ALTERNATE MUNICIPAL JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that an alternate Municipal Judge of Addison Municipal Court of Record No. 1 is necessary to perform certain judicial functions in the Town of Addison; and

WHEREAS, the City Council of the Town of Addison has determined that Albert B. Fenton should be re-appointed as presiding Municipal Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that a compensation agreement should be entered into with Albert B. Fenton to perform services as an alternate Municipal Judge of Addison Municipal Court of Record No. 1.

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 and made a part hereof for all purposes.

Section 2. Appointment. The City Council of Addison hereby re-appoints Albert B, Fenton as alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on December 15, 2010 and shall end on December 31, 2012. Albert B. Fenton may not serve beyond the said term except upon the express authorization of the City Council, and this provision shall control over any law, rule, or regulation in conflict herewith.

Section 3. Authorization to Execute. The Compensation Agreement by and between the City and Albert b. Fenton regarding Albert B. Fenton's service as an alternate Municipal Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached hereto, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the said Compensation Agreement on behalf of the City.

Section 4. Effective Date. This Ordinance shall take effect from and after its adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2010.

_____
Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By:_____
John Hill, City Attorney

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

AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as "City") and ALBERT B. FENTON (hereinafter referred to as "Fenton").

I.

The City does hereby appoint, Fenton as Alternate Judge of Addison Municipal Court of Record No. 1 for a term of two (2) years. Said term shall commence on December 15, 2010 and will expire December 31, 2012.

II.

As Alternate City Judge, Fenton shall perform such functions as arraignment of prisoners and any other functions requested of him to assist the Municipal Judge. Fenton is employed on an on-call basis and is expected to be reasonably available to perform his role as Alternate Judge as requested by the City. Fenton is required to provide his own robe. Fenton is further required to spend a reasonable amount of time participating in judicial continuing legal education programs so as to enhance his abilities to perform as Alternate City Judge and to enhance the stature of such office.

III.

In consideration for such services, Fenton shall receive:

1. compensation of One Hundred and No/100 Dollars ($100.00) per hour, with a minimum of one hour's compensation to be paid to Fenton per sitting in his judicial capacity; and

2. the City's obligations are funded from current funds.

IV.

The City makes no warranties or representations as to the amount of work Fenton will receive under this Agreement.

V.

Fenton may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability. Fenton shall be required to provide thirty (30) days' notice of resignation.

VI.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions. The obligations and requirements of the parties hereto are performable in Dallas County, and exclusive venue for any dispute relating to this Agreement shall be in Dallas County.

VII.

The Parties further agree that Fenton may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VIII.

This Agreement is executed on behalf of the City by the City Manager or his designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

IX.

This instrument shall be the entire agreement and understanding between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the 23rd day of November, 2010, in Addison, Dallas County, Texas.

THE TOWN OF ADDISON, TEXAS

_____ By:_____

ALBERT B. FENTON Ron Whitehead, City Manager

Council Agenda Item: #R9

AGENDA CAPTION:

Presentation, discussion and consideration of approval of the purchase of furniture from III Office Resource Group in an amount not to exceed $40,000.

FINANCIAL IMPACT:

Not to exceed $40,000. Will be taken out of the Visit Addison Budget, account 612.

BACKGROUND:

This furniture is for the Visit Addison offices of the Visitor Services Department in Suite 430 at Village on the Parkway. This furniture will be placed in two offices, the reception area, small meeting room, two board rooms, and the kitchen area. Please see attached list of furniture.

RECOMMENDATION:

Staff reccomends approval

COUNCIL GOALS:

Continue to Attract Visitors

ATTACHMENTS:

Description:	Type:
Office Furniture Quote Sheet	Backup Material
Furniture Location Diagram	Backup Material

OFFICE RESOURCE GROUP

1303 W.Belt Line Rd Ste 201
Carrollton, Texas 75006
Telephone: 214-342-1463 Fax: 214-342-8433
www.officeresourcegroup.com
GS-29F-0006T

Bill To: Town of Addison
Address:

Phone: (972) 450-6236
Fax:
Contact: Diana George

Ship To:
Address:

Phone:
Fax:
Contact:

Est. Delivery Date: **Rep:**

QTY	VENDOR	STOCK NUMBER	LOC	DESCRIPTION	LIST PRICE	SELL PRICE	EXT SELL
2	ORG	Desk Set	P 25	U-Shape Desk sets Director Sales Manager		$ 2,549.00	$ 5,098.00
1	ORG	Reception		Reception Desk		$ 2,570.00	$ 2,570.00
4	ORG	Reception	P124 A	Reception Furniture Leather chairs		$ 650.00	$ 2,600.00
1	ORG	Reception	P120 G	Reception Furniture Glass Coffee Table		$ 479.00	$ 479.00
1	ORG	Reception	???	Receptionist Chair		$ 259.00	$ 259.00
2	ORG	Side Chairs	P142 G	2 Fabric Chairs Sales Manager office		$ 269.00	$ 538.00
1	ORG	Table	P 77E	48 inch round for Directors office		$ 499.00	$ 499.00
6	ORG	Chairs	P142 G	6 Fabric Chairs Directors office		$ 269.00	$ 1,614.00
1	ORG	File	P61 EE	File Cabinets Secretary office		$ 939.00	$ 939.00
3	ORG	Bookcase		Book Shelves 5 shelf		$ 199.00	$ 597.00
30	ORG	Conference		Boardroom chairs		$ 199.00	$ 5,970.00
40	ORG	Conference	P160 E	Additional Meeting room chairs		$ 105.00	$ 4,200.00
1	ORG	Table	P 165 B	48 inch rectangle table for kitchen		$ 279.00	$ 279.00
4	ORG	Chairs	P160 G	Kitchen table chairs		$ 69.00	$ 276.00
4	ORG	Chairs	P158H	Work room chairs tall		$ 119.00	$ 476.00
1	ORG	Table	P78	10ft Confernce room table		$ 1,999.00	$ 1,999.00
1	ORG	Training Rm		24" Conference Table 6-24x48 Sqr 2-24x48 Traps		$ 2,389.00	$ 2,389.00
4	ORG	Training Rm		24x48 Rectangular starters for confernce table		$ 310.00	$ 1,240.00
4	ORG	Training Rm		24x48 Trap Adders for confernce table		$ 267.00	$ 1,068.00
2	ORG	Conference	P78N	Buffets for meeting rooms		$ 699.00	$ 1,398.00
1	ORG	Cabinet	P105	Storage Racks		$ 279.00	$ 279.00
1	ORg	File		Used Metal File Cabinets storage work area		$ 375.00	$ 375.00
1	ORG	File		2dr lateral to match reception desk		$ 550.00	$ 550.00
2	ORG	File		2 dr lateral to match Director and Sales Manager desks		$ 550.00	$ 1,100.00
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -
						$ -	$ -

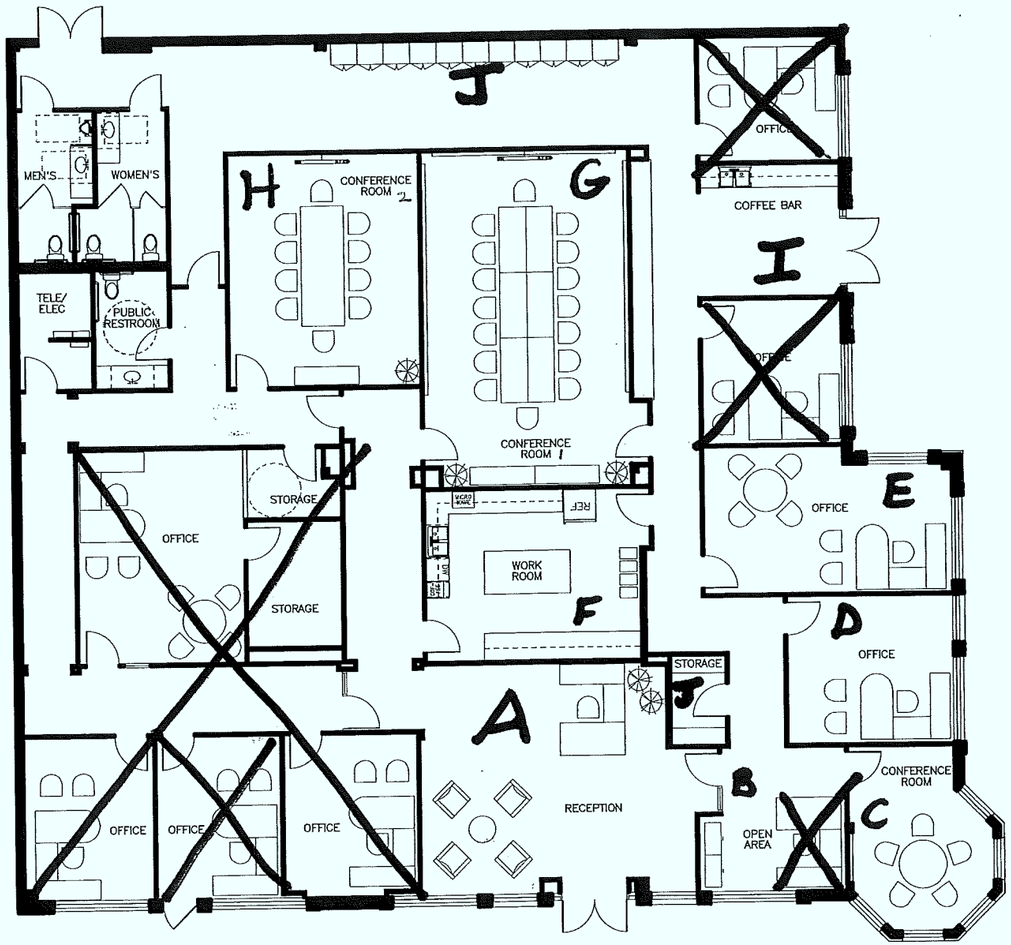
Accepted By X _____ **Date:**

Customer PO# _____

Delivery date may change due to vendors. Special Orders require a 50% non-refundable deposit and are non-refundable final sales. Used, closeouts, and showroom samples are final. A 30% restocking fee is assessed on all stock returns. Upstairs and after hour deliveries may require an upcharge on delivery.

Delivery: **MOP:**

	Subtotal	$ 36,792.00
	Delivery	$2,750.00
8.25%	Sales Tax	$ -
	Total	**$ 39,542.00**
	Deposit	$ -
	Balance	$ 39,542.00



Area A: Reception Area

Reception Desk

2 Drawer lateral file

Receptionist Chair

4 Leather Chairs

Glass Coffee Table

Area B: Office Space

File Cabinets for Secretary

1 Book Shelf (5)

Area C: Small Meeting Room

No furniture to be purchased

Area D: Sales Manager's Office

U-Shape Desk Set

2 Drawer lateral file

1 Book Shelf (5)

2 Fabric Chairs

Area E: Director's Office

U-Shape Desk Set

2 Drawer lateral file

1 Book Shelf (5)

48 inch round table

6 Fabric Chairs

Area F: Work Room

4 Work Room Tall Chairs

Area G: Conference Room 1

6 24" Conference Tables

2 Square Extensions

4 24 X 40 Rectangular starters

4 24 X 48 Trap Adders

20 Board Room chairs

40 Stack meeting room chairs

1 Buffet

Area H: Conference Room 2

10ft Conference Room Table

10 Board Room chairs

1 Buffet

Area I: Small Kitchen Area

48 inch rectangle table

4 kitchen table chairs

Area J: Storage Area's

1 Storage Rack

1 Metal File Cabinet

Council Agenda Item: #R10

AGENDA CAPTION:

Presentation , discussion and approval to pursue street and utility easement agreements from all individual property owners on Lake Forest in order to allow for rehabilitation of Lake Forest Drive.

FINANCIAL IMPACT:

There is not currently funding identified for improvements to Lake Forest Drive. Please see background for specifics on estimated costs.

BACKGROUND:

Lake Forest Drive is a private road. At the time the original subdivision was sub-divided, the lots were platted to the center of the pavement and no ownership of the road was conveyed as public right-of-way. The pavement surface is asphalt and over time, portions of it have deteriorated. The property owners along the street have requested the Town consider assuming maintenance responsibility for the street and their request is attached. In order for the Town to expend public dollars for maintenance of the road, it will need to have either right-of-way dedication or dedication of a street easement. A sample street easement dedication is attached. The Town estimates that the cost of preparing the 18 easement descriptions (field surveying required) will be $13,500. ($750 per easement x 18 (properties) = $13,500) The dedication of all 18 property owner easements would be required for the Town to file them and assume the maintenance responsibility for the complete road. Staff is recommending that one of the following **two** alternatives be pursued. **Alternative No. 1**) Short term repair of north end of Lake Forest just south of the creek. This area begins at the bridge and goes south for 295 ft and is approximately 21 ft wide. The estimate for this section is $21,000 + $13,500 for the easement descriptions for a total of $34,500. This would allow for the Town to provide a fix to the immediate problem at the north end while awaiting the completion of the two remaining tracts before resurfacing the entire road.

Alternative No. 2) Pavement sub-grade repairs where needed of

entire street and overlay including some drainage improvements where there are issues. Engineering design cost - $14,000. Construction cost estimate - $104,000 for a total estimated cost of $118,000 + $13,500 = $131,500.

RECOMMENDATION:

Staff seeks direction on whether to move forward with pursuing street and utility easement agreements to allow for rehabilitation of Lake Forest Drive.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:	Type:
Lake Forest Letter	Backup Material
Easement	Backup Material
Pictures	Backup Material

July 14, 2010

The Honorable Joe Chow
His Honor the Mayor
Town of Addison
15650 Addison Road
Addison, TX 75001

Dear Mayor Chow,

We are writing to you today to request that the much needed repair work to our street be completed by the Town of Addison.

As you may already be aware, our street is in extremely poor condition. The sole thoroughfare through our neighborhood is littered with potholes, including one situated in such a way that it may be affecting the structural integrity of the bridge. This circumstance is making traffic difficult and potentially unsafe. As tax paying residents, we are very concerned with the appearance and functionality of our neighborhood and, frankly, are perplexed with the Town's reluctance to repair the street.

Over the past several years, construction permits have been granted and issued by the town for homes to be built in our neighborhood. The granting of these permits for new homes ensures future revenue for the town, but also ensures additional degradation to the road. The continued use by these heavy construction vehicles along with the town's sanitation and recycling trucks have deteriorated the street to the point where we can no longer remain silent.

We are formally petitioning the town to repair and improve the condition of Lake Forest Drive. Lake Forest residents pay full taxes to Addison and request the full services allotted to other residents of the town. Neighborhoods in the vicinity of Lake Forest do not suffer from the same poor road quality and we simply ask for the same services they currently receive.

We hope that you will advance our request to the Public Works Department and direct them to begin work on our failing infrastructure as quickly as possible. We thank you in advance for your prompt attention to this matter.

Best Regards,

The Residents of Lake Forest

ROW Esmt.

ADDRESS	NAME	SIGNATURE
14800 LAKE FOREST	NEAL	
14801 LAKE FOREST	ENVANI/WARD	
14804 LAKE FOREST	CHILTON	
14805 LAKE FOREST	KURZON	
14885 LAKE FOREST	O'BRIEN	
14888 LAKE FOREST	WALKER	
14900 LAKE FOREST	LEE	
14901 LAKE FOREST	WHITWORTH	
14904 LAKE FOREST	AGRITELLEY	
14907 LAKE FOREST	HARDIN	
14910 LAKE FOREST	RUBENSTEIN	
14911 LAKE FOREST	HOWARD	
14917 LAKE FOREST	BUTLER	
14918 LAKE FOREST	HERSHMAN	

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
Ms. Lea Dunn
Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001

STATE OF TEXAS §
§
COUNTY OF DALLAS §

STREET AND RIGHT-OF-WAY EASEMENT

DATE: _____, 2010

GRANTOR: _____
_____
_____, Texas _____
(Dallas County, Texas)

GRANTEE: Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
(Dallas County, Texas)

CONSIDERATION:

Ten Dollars ($10.00) in hand paid by Grantee, the receipt and sufficiency of which is acknowledged by Grantor, and other good and valuable consideration.

EASEMENT PROPERTY:

See Exhibit "A" attached hereto and incorporated herein by reference.

EASEMENT PURPOSE: For public street and right-of-way for the passage of vehicular and pedestrian traffic and for street and road purposes together with all and singular related rights and appurtenances, including (without limitation) the construction, installation, improvement, inspection, reconstruction, replacement, repair, use, operation, maintenance, opening, closing, and removal of a street, road, sidewalks, utilities (including, without limitation, water and sanitary sewer facilities and related appurtenances), drainage facilities, landscaping, trails, signs, traffic control devices, and other uses of a public right-or-way and/or street as Grantee may find necessary or appropriate or which are customary or incidental thereto. Improvements may be on such

grade and according to such plans and specifications as will, in the opinion of Grantee, best serve the public purpose.

RESERVATIONS FROM CONVEYANCE:

None.

EXCEPTIONS TO WARRANTY:

None.

GRANT OF EASEMENT: Grantor, for the Consideration described above and subject to the Reservations from Conveyance and the Exceptions to Warranty, DEDICATES, GRANTS, SELLS, and CONVEYS to Grantee and Grantee's heirs, successors, and assigns an easement in gross and right-of-way on, in, over, under, through, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), TO HAVE AND TO HOLD the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and the Exceptions to Warranty.

TERMS AND CONDITIONS:

1. *Character of Easement*. The Easement is exclusive and irrevocable. The Easement is in gross and for the benefit of Grantee and Grantee's heirs, successors, and assigns.

2. *Duration of Easement*. The duration of the Easement is perpetual.

3. *Reservation of Rights*. Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee and Grantee's heirs, successors, and assigns for the Easement Purpose. Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Grantee and Grantee's heirs, successors, and assigns and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee and Grantee's heirs, successors, and assigns, as long as such use and further conveyance is subject to the terms of this agreement and does not interfere with the use of the Easement by Grantee and Grantee's heirs, successors, and assigns.

4. *Secondary Easement*. Grantee and Grantee's heirs, successors, and assigns have the right to use as much of the property of Grantor that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary for the Easement Purpose within the Easement Property; however, Grantee and Grantee's heirs, successors, and assigns must

promptly restore the Adjacent Property to at least its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property*. Grantor agrees, for the consideration set forth herein, not to construct or place within the Easement Property any buildings, structures, fences, or other improvements of any nature whatsoever, or any shrubs, trees or other growth of any kind, or otherwise interfere with the Easement, without the prior written consent of Grantee. Grantee shall have the right to remove, and keep removed, all or parts of any building, structure, fence, or other improvement, or any shrub, tree, or other growth of any kind, or other interference of any character, that is located within the Easement Property and which, in the judgment of Grantee, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation and maintenance of the Easement for the Easement Purpose or the exercise of Grantee's rights hereunder. All matters concerning the configuration, construction, installation, improvement, inspection, reconstruction, replacement, repair, use, operation, maintenance, opening, closing, and removal of a street, road, sidewalks, utilities (including, without limitation, water and sanitary sewer facilities and related appurtenances), drainage facilities, landscaping, trails, signs, traffic control devices, and other uses of a public right-or-way and/or street as Grantee may find necessary or appropriate or which are customary or incidental thereto, are at Grantee's sole discretion.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties or to those benefited by this agreement; provided, however that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law, in equity, or otherwise.

7. *Binding Effect.* This Street and Right-of-Way Easement agreement binds and inures to the benefit of Grantor and Grantor's heirs, successors, and assigns and of Grantee and Grantee's, heirs, successors, and assigns.

8. *Choice of Law.* This Street and Right-of-Way Easement agreement shall be governed by and construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Exclusive venue is in Dallas County, Texas.

9. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any rights or remedies set forth in this Street and Right-of-Way Easement agreement does not preclude pursuit of any other rights or remedies in this Street and Right-of-Way Easement agreement or provided by law, in equity, or otherwise.

10. *Integration*. This Street and Right-of-Way Easement agreement contains the complete agreement of the parties with respect to the matters set forth herein and cannot be varied except by written agreement of the parties. The parties agree that there are no oral

agreements, representations or warranties that are not expressly set forth in this Street and Right-of-Way Easement agreement.

11. *Legal Construction*. If any provision of this Street and Right-of-Way Easement agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Street and Right-of-Way Easement agreement will be construed as if the unenforceable provision had never been a part of this agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Street and Right-of-Way Easement agreement are for reference only and are not intended to restrict or define the text of any section. This Street and Right-of-Way Easement agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

12. *Notices*. Any notice, demand, request or communication required or permitted under this Street and Right-of-Way Easement agreement shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Address for notice are as follows:

To Grantor:	To Grantee:
_____	Town of Addison, Texas
_____	5300 Belt Line Road
_____	Dallas, Texas 75254
	Attn: City Manager

From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Street and Right-of-Way Easement agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

13. *Third Party Beneficiaries.* This Street and Right-of-Way Easement agreement and all of its provisions are solely for the benefit of the parties hereto and their respective heirs, successors, and assigns.

14. *Authorized Persons*. The undersigned persons are the properly authorized representatives of each of the respective parties and have the necessary authority to execute this Street and Right-of-Way Easement agreement on behalf of the parties hereto.

MISCELLANEOUS:

When the context requires it, singular nouns and pronouns include the plural.

EXECUTED effective as of the date first written above.

GRANTOR:

_____

By:_____
Typed Name:_____

GRANTEE:

Town of Addison, Texas

By:_____
Ron Whitehead, City Manager

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared _____ _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 201__.

_____
Notary Public, State of Texas

Print Name:_____

My commission expires:_____

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, 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.

[SEAL] Given under my hand and seal of office this _____ day of _____, 201__.

_____
Notary Public, State of Texas

Print Name:_____

Consent and Subordination by Lienholder

Lienholder, the undersigned _____ (formed and operating under the laws of the State of _____) , whose address is _____, as the holder of [a] lien[s] on the Easement Property, consents to the terms of the above grant of Easement, including the terms and conditions of the grant and all provisions of the Street and Right-of-Way Easement agreement, and Lienholder hereby subordinates its lien[s] to the rights and interests of Grantee (and Grantee's heirs, successors, and assigns), so that a foreclosure of the lien[s] (or transfer in lieu of foreclosure, or Lienholder's succession to the interests of Grantor, its heirs, successors, and assigns, by other means) will not extinguish the rights and interests of the Grantee, its heirs, successors, and assigns. The person signing on behalf of Lienholder hereby represents that the person has authority and is duly authorized to sign this Consent and Subordination by Lienholder on behalf of and to bind Lienholder.

LIENHOLDER:

_____

By:_____

Typed/printed name:_____

Title:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 201__.

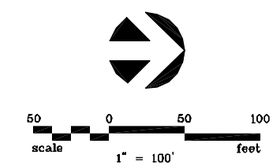
_____
Notary Public, State of Texas

Print Name:_____

My commission expires:_____

EXHIBIT "A"
TO STREET AND RIGHT-OF-WAY EASEMENT

[Description of Easement Property]



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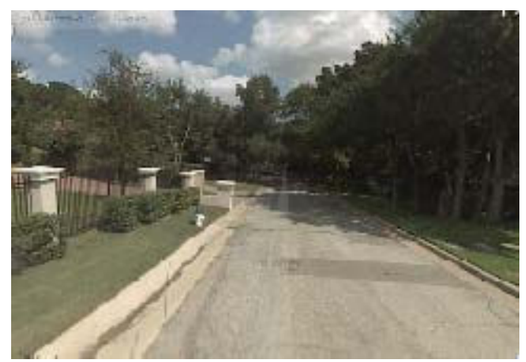

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08/25/2010

g&a Grantham & Associates
Civil Engineering
6570 NAAMAN FOREST BLVD., SUITE 200
GARLAND, TEXAS 75044
(972) 864-2333 (TEL)
(972) 864-2334 (FAX)

TOWN OF ADDISON

LAKE FOREST DRIVE
EXHIBIT

Council Agenda Item: #R11

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an Economic Development Program Grant Agreement between the Town of Addison and Keller Properties, L.P., owner of the Addison Arbor, Office in the Park, located along the west side of Midway Road and approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive, regarding the repair and reconstruction of the building formerly known as Dovie's located within the Addison Arbor property.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
Economic Development Program Grant Agreement	Backup Material
Economic Incentive Summary	Backup Material

STATE OF TEXAS §
§
COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement ("Agreement") is made and entered into by and between Keller Properties, L.P. ("Keller Properties"), a Texas limited partnership, and the Town of Addison, Texas ("Addison" or the "City"), a Texas home rule municipality, for the purposes and consideration stated below (the City and Keller Properties are herein sometimes referred to together as the "parties" and individually as a "party").

Recitals:

1. Keller Properties is a limited partnership formed and operating under the laws of the State of Texas, with its principal offices located at 934 19th St., Santa Monica, California 90403 and its principal Texas offices located at 5601 Bridge Street, Suite 504, Fort Worth, Texas 76112. Keller Properties is the sole owner of that property located within Addison and known as Addison Arbor, Office in the Park ("Addison Arbor"), having purchase the property in March, 2009. Addison Arbor is generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive is comprised of approximately 11.2967 acres of land, as more fully depicted and described in Exhibit A attached hereto and incorporated herein.

2. Addison Arbor offers a unique business setting with classic architecture, functional and flexible office space, and tree-lined pathways winding through an office campus featuring tennis courts, a gazebo and landscaping. Addison Arbor includes and is built around the historic home of Audie Murphy (the "Home"), a World War II hero and movie star. The Home, constructed in the early 1930's, was purchased by Audie Murphy in the 1950's. In 1980 the Home was converted to a popular and much-loved restaurant, Dovie's, which closed in 2007. The location of the Home within Addison Arbor is shown on the attached Exhibit A (the "Home Location").

3. The Home, one of the oldest buildings in Addison, is in need of repair and renovation, including life and safety renovations and improvements to bring it into compliance with current building, electrical, plumbing, fire, and other applicable codes of the City. Keller Properties desires to renovate and remodel the Home in order to achieve such compliance and to encourage and promote the commercial occupancy and use of the Home and the remainder of Addison Arbor.

4. The Home consists of approximately _____ square feet of rentable space. Keller Properties anticipates that, in connection with the remodeling and renovation of the Home, it will be able to promptly lease for at least a ____ year period of time approximately _____ square feet of the Home to a business or businesses in the technical services sector, such as an information technology services. Keller Properties further anticipates that the remainder of the Home can be used as a place to encourage, promote and foster the start-up of businesses or to accelerate the growth of fledgling business by providing entrepreneurs with facilities, resources and services to produce viable businesses that can help create jobs and

otherwise promote and encourage the economy of the City. It is desired and anticipated that the remodeling and renovation of the Home will create an environment and atmosphere conducive to business gatherings and meetings, and will result in an increased connectivity between businesses operating within the Home, between and among businesses within Addison Arbor, and between and among Addison Arbor businesses and businesses located in adjacent properties.

6. The renovation and remodeling of the Home, the occupancy of a substantial portion of the Home by a tenant as described herein, and the use of the remainder of the Home for business incubation and promotion purposes, will promote the local economy and stimulate business activity within the City. In connection therewith, Keller Properties asked the City to provide to Keller Properties an economic development incentive to defray a portion of the cost incurred by Keller Properties to renovate and remodel the Home. The City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City. This Agreement constitutes such a program for promoting local economic development and stimulating business and commercial activity within the City.

7. TIP Strategies, Inc., a business and economic development consulting firm, was recently retained by the City to develop an economic development strategic plan for the City. That plan was completed and is dated October 6, 2010, and a copy of the plan is on file in the Office of the City Secretary. The plan emphasizes encouraging entrepreneurship and attracting to the City technical services sector firms, and one action suggested by the strategic plan is the creation of "virtual incubators by using public funds to subsidize private lease space for qualifying small businesses," with that action being described as "a tool [that] offers the advantage of both supporting small business development as well as filling vacant office space." The economic development program grant under this Agreement is consistent therewith .

8. The City has determined that providing Keller Properties with an economic development incentive as set forth herein will facilitate the renovation and remodeling of the Home by Keller Properties, will further and encourage employment within the City, will promote and increase the tax base of the City, will further the economic development and other objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity within the City.

NOW THEREFORE, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Town of Addison, Texas and Keller Properties, L.P. do hereby agree as follows:

Section 1. Definitions.

"Addison Arbor" means the Addison Arbor, Office in the Park, generally located within the City along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive, and comprised of approximately 11.2967 acres of land, as more fully depicted and described in Exhibit A attached hereto and incorporated herein.

"Business day" means any calendar day which is not a Saturday or Sunday or any holiday of the Town of Addison, Texas.

"City" means the Town of Addison, Texas.

"Casualty" means the Home is wholly or partially destroyed by fire, earthquake, flood or similar casualty that renders the Home unfit for its intended purpose.

"Certificate of Occupancy" means a final, unconditional certificate of occupancy for the Home (following the construction of the Improvements) as may be required by the applicable ordinances, codes, standards, rules, and regulations of the City.

"Commencement of Construction" means that (i) the plans for construction of the Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and (ii) all necessary permits for construction of the Improvements pursuant to the respective plans therefore have been issued by all applicable governmental authorities.

"Completion of Construction" means that (i) the Improvements have been substantially completed, (ii) a certificate of substantial completion reflecting the substantial completion of the Improvements has been issued by the general contractor(s) retained to construct the Improvements and by the architect(s) retained to design the Improvements, and a copy of such certificate has been delivered to the City, and (iii) the Certificate of Occupancy has been issued by the City.

"Construction Contract" means a contract or contracts for the construction of the Improvements (or any part thereof) entered into by Keller Properties which includes, among other things, a requirement that the construction of the Improvements be in accordance with and performed as set forth in the Construction Plans.

"Construction Costs" means the actual costs incurred and paid by Keller Properties to construct the Improvements as set forth in the Construction Contract, not to exceed the price to construct the Improvements set forth in the Construction Contract (including any change orders thereto). Construction Costs include only the actual costs to construct the Improvements, and do not include any other costs related thereto, such as design costs (engineering, architectural), costs of property acquisition, legal fees, costs incurred to pursue or defend against any claim under or in connection with the Construction Contract, or other costs.

"Construction Plans" means properly detailed and dimensioned construction drawings, plans, specifications, and calculations prepared by a Texas registered professional engineer and/or architect licensed by the State of Texas, prepared in accordance with the Design Plans and with all applicable federal, state and local laws, rules, regulations, ordinances, codes, and standards, which set forth in detail the Improvements to be made to the Home and which will include, among other things: (a) floor plans, (b) elevations, (c) structural and framing detail, (d) electrical, mechanical, and plumbing systems and design, (e) specifications and related calculations as appropriate, (f) materials and interior and exterior finishes, and (g) all other documents required to obtain a building permit.

"Event of Bankruptcy or Insolvency" means (i) the liquidation, dissolution, or termination as a going business, (ii) insolvency, (iii) appointment of a receiver for Keller Properties or any of its property or for the general partner of Keller Properties, or the interest of Keller Properties under this Agreement is levied under other legal process, (iv) any general assignment for the benefit of creditors, (v) assignment or conveyance of all or a substantial portion of property for the benefit of creditors, (vi) a transfer in fraud of creditors according to any applicable law, or (vii) the filing of a petition for relief, or the filing of a petition for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

"Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorism, riot, civil commotion, insurrection, government or de facto governmental action, fires, explosions or floods, strikes, slowdowns or work stoppages, but a contingency or cause shall not be beyond the reasonable control of a party when such cause (a) is reasonably foreseeable or peculiar to such party (such as, but not limited to, financial inability or ordering materials requiring a long lead time), (b) could have been prevented by such party's reasonable precautions, or (c) can reasonably be circumvented by such party through workaround plans or similar means.

"Home" has the meaning set forth in the above and foregoing Recitals to this Agreement.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Keller Properties or any property or any business owned by Keller Properties within the City.

"Improvements" means renovations and improvements to the Home for use as office space leased by third parties, including as described above in the Recitals to this Agreement. The Improvements are generally described in Exhibit B attached hereto and incorporated herein, will be detailed and more fully described in the Construction Plans and in the submittals filed or to be filed with the City in order to obtain a building permit(s) from time to time during the Term of this Agreement.

"Include(s)" 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.

"Keller Properties" means Keller Properties, L.P., a Texas limited partnership.

"Program" means the payment of an economic development grant pursuant to the terms of this Agreement and approved by the City pursuant to Chapter 380, Tex. Loc. Gov. Code.

"Program Grant" means an economic development grant in the amount set forth in Section ___ of this Agreement which may be paid by the City to Keller Properties in installments during the Term of this Agreement from lawfully available funds as set forth in this Agreement.

Section 2. Term.

This Agreement shall be effective as of the date of execution of this Agreement by both the City and Keller Properties (the "Effective Date"), and will continue in effect thereafter until the earlier of (a) the expiration of the thirtieth (30th) day after the Fourth Anniversary (as defined in Section 3.B., below) and (b) the payment of the Fifth Payment (as defined in Section 3.B., below) by the City to Keller Properties, subject, however, to the earlier termination of this Agreement in accordance with the terms hereof (the "Term").

Section 3. Program Grant

In consideration of the performance by Keller Properties of the obligations outlined and identified in this Agreement, and subject to Keller Properties' continued satisfaction of and compliance with all of the terms and conditions of this Agreement, the City agrees, subject to the terms of this Agreement, to make Program Grant installment payments as set forth in this Agreement. Notwithstanding any other provision of this Agreement, the maximum amount of the Program Grant (i.e., the total amount of all installment payments) pursuant to this Agreement shall be the lesser of (i) fifty percent (50%) of the Construction Costs, or (ii) Five Hundred Thousand and No/100 Dollars ($500,000.00) (the "Maximum Amount"). The Maximum Amount shall be determined by the City following the Completion of Construction. Subject to the terms of this Agreement, the Maximum Amount of the Program Grant will be paid in five annual installments (each an "Annual Program Grant Payment"), with the amount of each installment being equal to one-fifth (1/5) of the Maximum Amount.

Subject to the foregoing and all other provisions of this Agreement, Program Grant installment payments will be made in accordance with the following:

A. 1. The first Annual Program Grant Payment (the "First Payment") shall be made to Keller Properties on or before the thirtieth day following the First Installment Due Date. The "First Installment Due Date" shall be the date on which all of the following preconditions to payment have been timely satisfied (determined as set forth below), and the City's obligation to make the First Payment is and shall be conditioned upon and subject to Keller Properties' timely compliance with and satisfaction of all of the following preconditions to payment:

(a) Following the Effective Date, Keller Properties shall, with reasonable diligence (but in any event not later than _____, 201___), cause the Construction Plans to be prepared and submitted to the City for the City's review and consideration of approval. Upon the submission of the Construction Plans to the City, the City shall review and approve or disapprove the same within 10 business days after submission by Keller Properties. Disapproval of the Construction Plans or any portion thereof shall include the reason(s) for such disapproval; such disapproved Construction Plans shall be revised and resubmitted to the City for its consideration of approval in accordance with the above. Any material modifications or change to the Construction Plans shall be submitted to the City for its review and consideration of approval in accordance with the above. Keller Properties shall not have awarded or entered into a Construction Contract unless and until such time as the City has approved the Construction Plans.

(b) Commencement of Construction by have occurred on or before _____, 201__, and Keller Properties shall have by that date provided to the City evidence thereof in form and content satisfactory to the City.

(c) Completion of Construction shall have occurred on or before _____, 201__, and Keller Properties has by that date provided to the City evidence thereof in form and content satisfactory to the City.

(d) Within ten (10) days after the date of the City's Certificate of Occupancy, Keller Properties shall have submitted to the City evidence of the Construction Costs in form and content satisfactory to the City (including invoices or statements (together with any receipts, documents, or other information in connection therewith) submitted to Keller Properties by its contractor(s) describing the work performed and the cost for such work, and statements and other documentation (e.g., copies of checks) reflecting payment of the Construction Costs by Keller Properties.

(e) Keller Properties shall have timely paid City building permit, inspection, and other applicable fees for work associated with the Improvements.

(f) On or before _____, 201__ (the "Lease Notice Date"), Keller Properties shall have, as landlord, executed a lease or leases (collectively, "Lease") of at least _____ square feet of the Home, with at least one Lease being with a business in an emerging technology or industry (such as information technology). Each Lease shall have a rent commencement date of not later than _____, 201__ (the "Rent Commencement Date"), be for a term of not less than five (5) consecutive years following the Rent Commencement Date, and include a charge for rent that is at least comparable to the charge for rent in other portions of Addison Arbor that have been leased (as a new lease or by a lease amendment) by Keller Properties since March, 2009. On or before the Lease Notice Date, Keller Properties shall have provided to the City evidence of such executed Lease of the Home (including evidence that the Lease include the provisions described above) in form and content satisfactory to the City.

(g) On or before _____, 201__ (the "Covenant Notice Date"), Keller Properties shall have filed in the real property records of Dallas County, Texas a covenant running with the land that provides that the Home shall not, for a period of at least ten (10) years following the date of the Certificate of Occupancy, be removed from its location or substantially altered without the prior written consent of the City, which covenant shall further reflect the reimbursement obligation set forth in Section 4.B. of this Agreement and shall name the City as a third party beneficiary thereto (the "Restrictive Covenant"). Such Restrictive Covenant shall be in form and content satisfactory to the City, and shall be filed against, be applicable to, and affect all of the Addison Arbor. On or before the Covenant Notice Date, Keller Properties shall have provided to the City evidence of the filing of the Restrictive Covenant that is in form and content satisfactory to the City.

(h) Keller Properties shall have received the Certificate of Occupancy from the City on or before _____, 201__.

(i) Keller Properties shall have continuously owned the Home from the Effective Date through the First Installment Due Date.

(j) Keller Properties shall not have an uncured breach or default of this Agreement.

2. Upon the completion of all of the above and foregoing preconditions to payment of the First Payment by the City, Keller Properties shall promptly (but in any event not later than 30 days after the date of the Certificate of Occupancy) give to the City written notification of its determination that all such preconditions have been complied with and satisfied and shall certify the same to the City, which certification shall be by affidavit sworn to by an authorized representative of Keller Properties, in form and content satisfactory to the City. The City shall, upon its receipt of such notification and certification, review the evidence and any other materials or information submitted to the City by Keller Properties in connection with the said preconditions to payment. Within fifteen (15) days after its receipt of such notification and certification (together with evidence and any other materials or information submitted to the City by Keller Properties), the City shall make its determination as to whether or not Keller Properties has timely complied with and satisfied all of the preconditions to payment of the First Payment, and shall within such fifteen (15) day period give to Keller Properties written notice of its determination.

If the City determines that Keller Properties has complied with and satisfied all of the preconditions to payment of the First Payment, the date that written notice of such determination is given to Keller Properties shall be the "First Installment Due Date." If the City determines that Keller Properties has failed to comply with and satisfy all of the preconditions to payment of the Program Grant, the City shall have no obligation to make the First Payment or any other Annual Program Grant Payment, and the City may immediately terminate this Agreement without providing any opportunity for cure.

3. Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payments shall not be due and payable, and this Agreement may be terminated by the City, if Keller Properties fails to timely comply with and satisfy to the City's satisfaction any of the preconditions to the First Payment as set forth in this Section 3.A.

B. The:

- second Annual Program Grant Payment shall be made to Keller Properties within thirty (30) days after the anniversary of the First Installment Due Date (the "First Anniversary");

- the third Annual Program Grant Payment shall be made to Keller Properties within thirty (30) days after the second anniversary of the First Installment Due Date (the "Second Anniversary");

- the fourth Annual Program Grant Payment shall be made to Keller Properties within thirty (30) days after the third anniversary of the First Installment Due Date (the "Third Anniversary"); and the

- fifth (final) Annual Program Grant Payment (the "Fifth Payment") shall be made to Keller Properties within thirty (30) days after the fourth anniversary of the First Installment Due Date (the "Fourth Anniversary") (each of the First Anniversary, Second Anniversary, Third Anniversary, and Fourth Anniversary are referred to herein as an "Anniversary");

provided, however, that each of the following preconditions to payment have been satisfied with respect to each of such Annual Program Grant Payments, and the City's obligation to make each of such Annual Program Grant Payments is and shall be conditioned upon and subject to Keller Properties' timely compliance with and satisfaction of all of the following preconditions to such payment:

1. Continued fee simple ownership of the Home and the Addison Arbor property by Keller Properties at all times during the Term of this Agreement;

2. The Home Location shall not be changed during the Term of this Agreement;

3. The Home shall be properly maintained and kept in a good condition and repair at all times during the Term of this Agreement;

4. The Lease of at least _____ square feet of rentable space shall have continued in full force and effect, or if not, Keller Properties shall have diligently pursued the execution of a new lease or leases so that at least one lease of the Home (or portion thereof) is with a business in an emerging technology or industry (such as information technology);

5. Keller Properties shall not have an uncured breach or default of this Agreement; and

6. Keller Properties shall submit to the City a certification in writing that each of the above preconditions included in B.1, B.2, B.3, B.4, and B.5 have been met and satisfied by Keller Properties, which certification shall be by affidavit sworn to by an authorized representative of Keller Properties and be in form and content satisfactory to the City (and each such certification shall be submitted not earlier than the date of the applicable Anniversary and not later than 10 days thereafter) (each certification being an "Annual Certification"). Each Annual Certification shall include evidence and any other materials and information to support the representations made therein, including such materials and information as the City may request. If Keller Properties fails to submit

such Annual Certification within such 10 day period, the City shall have no obligation to pay to Keller Properties the applicable payment.

C. The payment of any Program Grant shall be made solely from lawfully available funds that have been appropriated and budgeted by the City, and such payments and the obligation of the City to make such payments are subject to the City's appropriation and budgeting of funds to make each such payment. The City shall have no obligation or liability to pay any Program Grant unless the City appropriates and budgets funds to make such payment during the budget year in which the Program Grant is payable and except as allowed by law. The City shall not be required to pay any funds or payments if prohibited or not authorized under federal, state or local laws, regulations, rules or a decision of a court of competent jurisdiction or state agency or department (including the Texas Attorney General), and any funds or payments paid pursuant to this Agreement which are so prohibited or unauthorized shall be promptly reimbursed by Keller Properties, and this Agreement terminated to the extent of the same (and such reimbursement obligation shall survive such termination).

D. Under no circumstances shall any of the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution or any other person or entity for any loan or credit agreement made by Keller Properties. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other person or entity.

E. The City's approval of the Construction Plans or any other plans or documents pursuant to this Agreement does not and shall in no event constitute the City's acceptance of responsibility or liability for the same or their accuracy or completeness, and does not and shall in no event be or constitute a release of the responsibility and liability of Keller Properties, or its design professional (e.g., architect, engineer) retained to provide services regarding the Construction Plans or any other plans or documents, , and such approval is not an assumption of or an indemnification for such responsibility or liability by the City for any defect, error or omission in the Construction plans or any other plans or documents, the responsibility and liability for the Plans being solely that of Keller Properties and its contractors.

Section 4. Termination; Reimbursement.

A. This Agreement may be terminated as set forth below without notice or demand:

1. upon the execution by both parties of a written agreement terminating this Agreement;

2. upon the expiration of the Term;

3. at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement (including, without limitation, any of the provisions of Section 3 of this Agreement, including a failure to comply with any of the conditions listed in subsection B of Section 3 (e.g., if the Home is not properly maintained and kept in a good condition and repair at all times)), and such breach or failure is not cured or

remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;

4. if Keller Properties suffers or is involved in an Event of Bankruptcy or Insolvency;

5. at the City's option, if any Impositions owed by Keller Properties to the City or the State of Texas shall become delinquent (provided, however, that Keller Properties retains the right to timely and properly protest and contest any such Impositions, and the City's right to terminate this Agreement shall be suspended during such protest and contest period); or

6. as otherwise provided in this Agreement.

B. If this Agreement is terminated pursuant to subsection A.3, A.4, A.5, or A.6 of this Section, Keller Properties shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City an amount ("Reimbursement Amount") equal to the amount of all Annual Program Grant Payments paid by the City to Keller Properties at the time of termination. This repayment obligation shall survive the termination of this Agreement.

All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Keller Properties.

Section 5. Representations by the City

The City represents that the City is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Keller Properties that the City does not warrant or guarantee that this Agreement, the Program Grant and/or the Program Grant payments will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or otherwise. In the event such court action related to the legality of this Agreement and the providing of the Program Grant is instituted, the parties shall defend such action at their respective expense. Should such litigation or other proceeding result in the loss of the Program Grant as provided herein, Keller Properties shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Crown shall promptly repay to the City the Program Grant payments previously made to Keller Properties by the City.

Section 6. Representations and Warranties by Keller Properties.

Keller Properties represents that:

(a) Keller Properties is a limited partnership duly organized and validly existing under the laws of the State of Texas and is qualified to do business in the State of Texas; has the

legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;

(b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Keller Properties' regulations or bylaws, or any agreement or instrument to which Keller Properties is a party or by which it may be bound as of the date hereof;

(c) Keller Properties has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability, through borrowing or otherwise, to enter into and pay for the construction of the Improvements;

(d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Keller Properties' officers, threatened against or affecting Keller Properties, which may result in a material adverse change in Keller Properties' business, properties or operations sufficient to jeopardize Keller Properties as a going concern; and

(e) This Agreement constitutes a valid and binding obligation of Keller Properties, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 7. Entire Agreement; Changes and Amendments.

This Agreement represents the entire and integrated agreement between the City and Keller Properties with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Keller Properties.

Section 8. Successors and Assigns; No Third Party Beneficiaries; Lien; Covenants Running with Land.

A. Keller Properties shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, succession, or otherwise) all or any part of this Agreement or of its rights and/or obligations hereunder without the prior written approval of the City, which approval shall not be unreasonably withheld. Any Conveyance of any kind or by any method without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Keller Properties shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or

entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

B. This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

C. Keller Properties does hereby grant to the City the right to prosecute or take appropriate action, at law, in equity, or otherwise, against Keller Properties to recover any sums which Keller Properties may owe to the City by repayment or reimbursement or otherwise, under this Agreement. Any payment due to the City under this Agreement is a lien which attaches to the Addison Arbor and all improvements thereon on January 1 of each year to secure the payment thereof. Upon the occurrence of a default, the City shall have the right, at its option and in accordance with law, to foreclose any lien(s) securing payment hereof and to exercise any of its other rights, powers and remedies under this Agreement, at law, in equity, or otherwise. In connection herewith, Keller Properties hereby waives presentment for payment, notice of dishonor, protest, notice of protest, and rights to setoffs and counter-claims.

D. The covenants and agreements of Keller Properties contained in this Agreement are covenants and agreements running with the land, are binding upon Keller Properties and its successors in interest, assigns, administrators, beneficiaries, heirs, executors, and other legal representatives, and are binding upon any person, corporation, or other legal entity having or acquiring any right, title or interest in or to any part of Addison Arbor and any improvements therein or thereon. The City may, in its sole discretion, record in the real property records of Dallas County a copy of this Agreement or a memorandum of this Agreement reflecting the terms of this Agreement.

Section 9. Notice.

Any notice, statement and/or report required or permitted to be given or delivered shall be in writing and shall be given, and deemed to have been properly given for all purposes, (i) if sent by Federal Express or other nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:	To Keller Properties:
Town of Addison, Texas	_____
5300 Belt Line Road	_____
Dallas, Texas 75254	_____
Attention: City Manager	Attention:_____

The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice.

Section 10. Venue; Applicable Law.

The obligations of the parties to this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be and lie in Dallas County, Texas. This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified, and all applicable federal, state, and local constitutional provisions, laws, rules and regulations. This Agreement shall be governed by and is subject to and shall be construed in accordance with the laws, rules and regulations of the State of Texas without regard to the choice of laws rules of any jurisdiction.

Section 11. Legal Construction/Partial Invalidity of Agreement

The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 12. Miscellaneous

A. The Recitals to this Agreement are incorporated herein and made a part hereof for all purposes. Section and subsection headings are for convenience only and shall not be used in interpretation of this Agreement.

B. Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), Keller Properties certifies that Keller Properties, and any branch, division, or department of Keller Properties, does not and will not knowingly employ an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code). Keller Properties agrees that if, after it receives any payment or funds from the City pursuant to this Agreement, Keller Properties, or a branch, division, or department of Keller Properties, is convicted of a violation under 8 U.S.C. Section 1324a(f), Keller Properties shall repay the amount of the payment or funds paid by the City to Keller Properties with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to Keller Properties, not later than the 120th day after the date the City notifies Keller Properties of the violation. The amount of such repayment, plus interest, shall be the amount of the payment or funds paid by the City to Keller Properties hereunder which is applicable to the period of time relevant to the conviction.

C. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

D. Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (i) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (ii) shall be cumulative, and (iii)

may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. It is not a waiver of or consent to default if a party fails to declare immediately a default or delays in taking any action.

E. All exhibits to this Agreement are incorporated herein by reference and made a part hereof for all purposes wherever reference is made to the same.

F. Any of the representations, covenants, and obligations of the parties hereto, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

G. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the parties.

H. In the event the City obtains a judgment against Keller Properties pursuant to an action brought under this Agreement, the City and Keller Properties agree that the City shall be entitled to proceed directly against one or more partners of Keller Properties or their property without first seeking satisfaction from Keller Properties.

I. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto.

EXECUTED and effective as of the ____ day of _____, 2010.

TOWN OF ADDISON, TEXAS

By:_____
Ron Whitehead, City Manager

ATTEST:

By:_____
Lea Dunn, City Secretary

KELLER PROPERTIES, L.P.

By:_____

Typed Name:_____

Title:_____

[Acknowledgments Follow on Next Page]

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

_____
Notary Public, State of Texas

My Commission expires:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____ _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he executed the same for the purposes and consideration therein expressed.

[SEAL] Given under my hand and seal of office this _____ day of _____, 2010.

_____
Notary Public, State of Texas

My Commission expires:_____

EXHIBIT A

[Description, depiction of Addison Arbor, Office in the Park, including the location of the Home]

EXHIBIT B

[Description of the Improvements]

TOWN OF ADDISON

Summary of Economic Incentive Programs

Through November 16, 2010

Business	Incentive	Status
Target Corporation	Rebate one-half of one percent of annual taxable sales in excess of $18,500,000. Agreement expires April 2015.	Payments have been made since inception of agreement, with none exceeding $10,000.
Hilton Corporation	Payment of $150,000 following receipt of evidence of continued corporate investment in offices and maintenance of minimum staffing and payroll levels.	Payment was made October 2010.
United Surgical Partners Inc.	Payment of $25,000 for three consecutive years following receipt of evidence of continued corporate investment in offices and maintenance of minimum staffing and payroll levels.	Staff continues to work with USPI to execute an agreement.
Crowne Plaza Hotel	Lesser of $30,000 per year for 10 years or 50% of additional tax dollars generated by expanded meeting space.	Agreement tentatively approved by Council, but Crowne Plaza management has yet to approve agreement or provide information supporting incentive program.
Zurich North America	Payment of $50,000 for three consecutive years following receipt of evidence of continued corporate investment in offices and maintenance of minimum staffing and payroll levels.	Agreement tentatively approved by Council, but staff is still negotiating agreement with corporate management.

Council Agenda Item: #R12

AGENDA CAPTION:

Presentation of the Quarterly Financial Report for the period ending September 30, 2010.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:	Type:
No Attachments Available	

Council Agenda Item: #ES1

AGENDA CAPTION:

Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
No Attachments Available	

Council Agenda Item: #R13

AGENDA CAPTION:

Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:	Type:
No Attachments Available	