



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

DECEMBER 14, 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 Presentation and discussion regarding crime reporting.
#WS1 -

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:

11/23/2010 Regular Meeting and Work Session

12/6/2010 Special Meeting and Work Session

#2b- Approval of a Contract for Services with Shakespeare Dallas for the Town's sponsorship of "Shakespeare in the Park" in Addison Circle Park annually in October 2011 and October 2012.

#2c- Approval of the publication of the Town's check register online.

#2d- Approval of the purchase of (1) 2011 Crane Truck under the Town's Inter-local Agreement with the Texas Local Government Purchasing Cooperative - known as BuyBoard in the amount of \$96,484.00.

#2e- Approval of the purchase of (1) 2011 Ambulance, (1) 3/4 Ton Fleet Service Truck, (1) 3/4 Ton Truck and (6) equipment attachments for the airport tractors under the Town's Interlocal Agreement with the Houston-Galveston Area Council (HGAC) in the amount of \$236,550.01.

#2f- Approval of a contract with Elite Landscaping totaling \$828,871.00 for construction of the Redding Trail Extension and George H.W. Bush Elementary landscaping and playground improvements.

#2g- Approval of a Trail and Lighting Easement Agreement between the Town of Addison and Greenhill School for the construction of the Redding Trail Extension.

Item #R3 Presentation of the Certificate of Achievement for Excellence in Financial Reporting for the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2009.

Attachment(s):

1. Certificate
2. News Release

Item #R4 **PUBLIC HEARING** Case 1612-SUP/The Social House. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located in the Village on the Parkway shopping center at 5100 Belt Line Road, Suite 410, on application from SH=Addison, LLC., represented by Mr. Stephen B. Lindsey.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- There shall be no live music allowed on the patios.
- The applicant shall not use any terms, including the term

“club,” or graphic depictions that denote alcoholic beverages in exterior signs.

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

Attachment(s):

1. Docket map, staff report, and commission findings

Recommendation:

Administration recommends approval.

Item #R5 **PUBLIC HEARING** Case 1611-SUP/Red Koolman's Beer and Wine. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, located in a Local Retail (LR) zoning district at 14647 Inwood Road, on application from Tsega Berhe.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, subject to the following conditions.

-Prior to the issuance of the staff's release of the Special Use Permit, a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees.

-A new “smart” controller shall be installed on the existing irrigation system.

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

Attachment(s):

1. Docket map, staff report, commission findings and letter

Recommendation:

Administration recommends approval.

Item #R6 Presentation, discussion and consideration of approval of
- the City Manager's recommended incentive compensation to Washington Staubach Addison Airport Venture for 2010 in the amount of \$162,042.00.

Attachment(s):

1. M. Acevedo - Memorandum
2. J. Jenkinson - Memorandum
3. 3rd Amendment & Exhibit 3

Recommendation:

Staff recommends approval.

Item #R7 Presentation, discussion and consideration of approval of
- an ordinance amending Chapter 14 (Aviation), Article III (Municipal Airport), Division 1 (Generally) of the Code of Ordinances adopting and amending rules and regulations relating to the use and operation of Addison Airport, including the use and operation of aircraft and vehicles, and hangars owned and/or operated by the Town.

Attachment(s):

1. Ordinance Regarding Airport Rules & Regulations
2. Airport Rules & Regulations

Recommendation:

Staff and Airport Management recommend approval.

Item #R8 - 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 #R9 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 2 with Austin Bridge & Road, L.P., in an amount not to exceed \$110,000.00 and an extension of twenty-three (23) calendar days for the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Recommendation:

Staff recommends approval.

Item #R10 - Presentation, discussion and consideration of approval of a Funding Agreement between the Town, the North Central Texas Council of Governments (NCTCOG), and the State of Texas to be applied to Sustainable Development projects.

Attachment(s):

1. Letter and Final Funding Agreement
2. Vitruvian Funding Chart

Recommendation:

Staff recommends approval.

Item #R11 - Presentation, discussion and consideration of approval of the Town's consent to assignment of an option contract from Twin City Hotels, LLC to Praveen Katapally and/or assigns regarding an option to lease the property located at 4460 Belt Line Road (Clay Pit Restaurant).

Attachment(s):

1. Consent to Assignment of Option Contract and Amendment to Option Contract
2. Exhibit 1 to Consent to Assignment
3. Option Contract

Recommendation:

Staff recommends approval.

Item #R12 - Presentation, discussion and consideration of approval of any action regarding the Property Assessed Clean Energy (PACE) program, including the adoption of House Bill 1937 (2009) that added Chapter 376 to the Texas Local Government Code.

Attachment(s):

1. Memorandum Regarding PACE Program
 2. PACE Article
-

Adjourn Meeting

Posted:

12/10/2010, 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 crime reporting.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R 2a

AGENDA CAPTION:

Approval of Minutes for:

11/23/2010 Regular Meeting and Work Session

12/6/2010 Special Meeting and Work Session

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

- [11/23/2010 Regular Meeting Minutes](#)
- [12/06/2010 Special Meeting Minutes](#)

Type:

Backup Material
Exhibit

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

November 23, 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

Upstairs Conference Room

Council Members Present:

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

Absent:

None

Work Session

Item #WS1 - Presentation and discussion regarding an update on the Texas Municipal Retirement System (TMRS).

There was no action taken.

Item #WS2 - Discussion regarding processes for the sale of beer and wine for off-premises consumption.

There was no action taken.

Attest:

Mayor-Joe Chow

City Secretary-Lea Dunn

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

November 23, 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

11/19/2010, 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:

Brady Phipps with the Police Department, Jeff Cockrill with the Fire Department and Oscar Martinez with the Parks Department .

There was no action taken.

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

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

#2b - Approval of an Ordinance amending the Town of Addison Employee Handbook by adding provisions thereto regarding social media.

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

#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.

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

#2d - Approval of an agreement with The Margulies Communication Group to assist the Town with media communications.

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

#2e - Approval of the annual renewal of the contract for professional services with Rodney Hand for production of the Addison Magazine.

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 #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.

Ordinance 010-044 was approved.

A motion to Approve was made by Councilmember Bianca Noble.

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 #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.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

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).

This Item will be addressed at a future meeting.

There was no action taken.

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).

A motion was made by Councilmember Blake Clemens to table the Item until December 6, 2010.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Failed

Voting Aye: Clemens, Lay, Noble

Voting Nay: Chow, Daseke, Mellow, Resnik

A motion to Approve the Item subject to City Manager and City Attorney approval was made by Councilmember Roger Mellow.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

Voting Aye: Chow, Daseke, Mellow, Resnik

Voting Nay: Clemens, Lay, Noble

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.

Resolution R10-027 was approved.

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 #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.

Ordinances 010-045, 010-046 and 010-047 were approved.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

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

A motion to Approve was made by Councilmember Don Daseke.

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 #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.

A motion to Approve was made by Councilmember Blake Clemens.

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 #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.

This Item was withdrawn from the Agenda.

There was no action taken.

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

Randy Moravec presented this Item.

There was no action taken.

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.

This Item was pulled

There was no action taken.

Attest:

Mayor-Joe Chow

City Secretary-Lea Dunn

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

December 6, 2010

7:00 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

12/3/2010, 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 the lowest and best bid to Highland Builders for the construction of the improvements to the Visitors Center, Phase II, located at Suite 400, Village on the Parkway, Addison, TX 75001, in the amount of \$1,218,433.00 with a contingency of 10% for a total amount of \$1,340,287.00.

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 #S2 - Presentation, discussion and consideration of approval of a resolution showing support for the Transportation Advocates of Texas Movement. This Movement advocates our support of initiatives advancing transportation projects in North Texas.

Resolution R10-028 was passed.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #S3 - Discussion regarding publication of the Town's check register online.

This Item will be on the 12/14/2010 Regular City Council Meeting Agenda.

There was no action taken.

Item #S4 - Demonstration by the Information Technology Department of, and discussion regarding, the new IPADs for the paperless agenda.

There was no action taken.

Attest:

Mayor-Joe Chow

City Secretary-Lea Dunn

Council Agenda Item: #R 2b

AGENDA CAPTION:

Approval of a Contract for Services with Shakespeare Dallas for the Town's sponsorship of "Shakespeare in the Park" in Addison Circle Park annually in October 2011 and October 2012.

FINANCIAL IMPACT:

The Town's sponsorship of each show is \$46, 500. Each show takes place within the first week of the new fiscal year so payment is split between two fiscal years and requires pre-authorization of future funds. The contract may be terminated at any time should funds not be made available. The current budget for FY 10-11 is \$46,500; however, it includes final payment for "2010 Two Gentlemen of Verona" plus the deposit for "2011 Hamlet". FY 11-12 will include the final payment for "2011 Hamlet" plus a deposit for the October 2012 show. See attached funding chart.

BACKGROUND:

Founded in 1971, Shakespeare Dallas offers North Texas residents a unique opportunity to experience Shakespeare in a casual park setting, as well as providing cultural and educational programs to audiences of all ages. The Town of Addison has partnered with Shakespeare Dallas to present Shakespeare in Addison Circle Park for the past ten years. Through this association, we have been able to enhance Addison's reputation as a quality events and artistic performance. The attached attendance summary shows the attendance for the past several years.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A, Continue to Attract Visitors

ATTACHMENTS:

Description:

- [2011 and 2012 Shakespeare Contract](#)
- [Attendance Summary](#)
- [FUNDING](#)

Type:

- Cover Memo
- Backup Material
- Backup Material

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services (hereinafter referred to as the "Contract" or the "Agreement") is made and entered into as of the _____ day of _____, 2010 by and between the Town of Addison, Texas (the "City") and Shakespeare Dallas ("Shakespeare Dallas") for the City's sponsorship of the "Shakespeare in the Park" that is to be held in annually in Addison Circle Park in October 2011 and October 2012.

WITNESSETH:

WHEREAS, Shakespeare Dallas is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting the cultural enrichment of the community through live, professional theatrical productions of superior quality based on the works of William Shakespeare; and

WHEREAS, Shakespeare Dallas' productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including visual, theatrical and musical arts; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, and desires to encourage and promote the arts through the execution of this Contract for Services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Shakespeare Dallas do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract and Agreement shall be from December 15, 2010 through December 11, 2012, subject to the termination provisions of this Contract.

II. SERVICES

A. Shakespeare Dallas shall conduct and present a production entitled "Hamlet" (the "Show") within the City on October 5-9 and 12-16, 2011 in accordance and compliance with the terms and conditions hereof and all laws, ordinances, rules, regulations, standards, guidelines, and policies of the City or any other governmental authority having jurisdiction over the Show. The Show shall be conducted within the Bowl area of Addison Circle Park located within the Addison Arts & Events District (the "Show Site").

A similar production will be held in 2012 with dates and production titles (also a "Show" for purposes of this Contract) mutually approved by the City and Shakespeare Dallas no later than November 15, 2011 for the 2012 production.

B. In connection with its conducting and presenting the Show held annually, Shakespeare Dallas shall provide the City with the following:

- (a) A listing of the City logo as a sponsor of the Show on collateral pieces, including but not limited to posters, fliers, invitations, admission passes, tickets, brochures, programs, etc.
- (b) A listing of the City logo as a sponsor of the Show on all print, broadcast, outdoor and electronic advertising, including but not limited to newspaper ads, magazine ads, radio ads, billboards, newsletters, web communications, etc.
- (c) A listing of the City as a sponsor of the Show in all press releases, and other communications regarding the Show.
- (d) A listing of the City logo as a sponsor on all street banners and signs in connection with the Show.
- (d) The inclusion of the Addison logo on the Shakespeare Dallas web site (www.shakespearedallas.org) or any other web site of Shakespeare Dallas and a link to the City's website (www.addisontexas.net).
- (e) Provide recognition of the Town of Addison from the stage at the Show.
- (f) Provide the City with placement of one banner display at the Show.
- (g) Provide the City with one full-page advertisement in the Shakespeare Dallas Playbill.
- (h) Provide the City with fifty (50) complimentary VIP admission and parking passes.
- (i) Submit detailed financial statements and program results to the City within thirty (30) days after the end of Show listing the expenditures made by Shakespeare Dallas with the revenues received pursuant to this Contract.
- (j) Payment of all fees including but not limited to City services, electrical service, rental equipment and services, site preparation materials and Pavilion cleaning fees.

With respect to the banner and advertisement described above, the City shall submit to Shakespeare Dallas the form and content of the same for its review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. In the event Shakespeare Dallas fails to disapprove (with specific comments regarding the reason(s) for such disapproval) such banner and advertisement within five (5) days after the same is submitted (or resubmitted after modifications, as the case may be) to Shakespeare Dallas, such banner and advertisement shall be deemed approved. The parties agree that the type of banners and advertisement provided for this same or similar event in the Town of Addison in years prior to this Agreement are acceptable.

C. The City shall provide to Shakespeare Dallas the following:

- (a) Compensation as outlined in Section III below (subject, however, to the City's annual budgeting and appropriation of funds to pay such compensation as determined by the City in its sole discretion).

- (b) Display of banner(s) (as approved by the City, in the City's sole discretion, and subject to availability) across Belt Line Road advertising the Show. Such banner(s) shall be supplied by Shakespeare Dallas to the City no later than October 3, 2011 for display on October 4, 2011 through October 28, 2011. Display dates for the 2012 production will be determined by the City by January 1, 2012 for the 2012 production.
- (c) Assistance with marketing and promotions, including but not limited to the following:
 - i. Listing on the City's website (www.addisontexas.net) with link to Shakespeare Dallas' website (www.shakespearedallas.org).
 - ii. Listing on the City's calendar of events that is distributed for publicity purposes and printed on collateral, subject to the Town's printing schedule and funding.
 - iii. Flier (provided by Shakespeare Dallas) insertion in the City's September 2011 and 2012 utility statements, subject to availability and to the City's review and approval.
- (d) Provide Shakespeare Dallas with the Show Site for conducting the Show, provided Shakespeare Dallas has complied with the terms and conditions of this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Shakespeare in the Park in October 2011 as described herein, the City shall pay Shakespeare Dallas the sum of Forty-Six Thousand, Five Hundred and No/100 Dollars (\$46,500.00). Such sum shall be paid in three installments: the first in the amount of \$15,500.00 payable by February 4, 2011; the second in the amount of \$15,500 payable by October 7, 2011; and the third in the amount of \$15,500 payable upon completion of the Show and Show marketing and performance reports are received by the City.

For the operation and provision of the services, projects and programs of Shakespeare in the Park in October 2012 as described herein, the City shall pay Shakespeare Dallas the sum of Forty-Six Thousand, Five Hundred and No/100 Dollars (\$46,500.00). Such sum shall be paid in three installments: the first in the amount of \$15,500.00 payable by February 3, 2012; the second in the amount of \$15,500 payable by October 5, 2012; and the third in the amount of \$15,500 payable upon completion of the Show and Show marketing and performance reports are received by the City.

Notwithstanding the above or any other provision of this Agreement, all such compensation and any other payments (if any) by the City under this Agreement are subject to the annual budgeting and appropriation of funds by the City to pay such compensation and to make such payments (if any) in its sole and absolute discretion.

IV. ASSUMPTION OF RESPONSIBILITY AND RISK; SHOW CANCELLATION

In connection with the Show and this Contract, Shakespeare Dallas agrees to assume and does hereby assume all responsibility and liability for any and all damages or injuries of whatsoever kind or nature sustained by any person or property, whether real or asserted, by or from the

performance of services hereunder by, or any act or omission of Shakespeare Dallas, its officials, officers, employees, agents, contractors, subcontractors, concessionaires, invitees, guests, or any other person acting by, through, or under the authority or direction of Shakespeare Dallas (together, "Responsible Parties"). Addison assumes, and shall have, no responsibility for any property placed by the Responsible Parties or any of them on the Show premises or the Show Site, and **Shakespeare Dallas hereby RELEASES the City, its elected officials, its officers, employees, representatives, volunteers, and agents from any and all claims or liabilities of any kind or nature whatsoever for any loss, injury or damages whatsoever to persons or property that are sustained by reason of the occupancy of the Show Site under this Agreement.**

Further, Shakespeare Dallas does agree **TO AND ASSUME ANY AND ALL RISKS** with respect to any loss, harm, injury (including death), accident, incident, action, occurrence or activity which may occur in connection with the Show, and do hereby **RELEASE, WAIVE, ACQUIT, AND FOREVER DISCHARGE** the Town of Addison, Texas and the elected officials, the officers, employees, agents, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, agents, representatives, and volunteers of the Town of Addison being each an "Addison Person" and collectively the "Addison Persons") from, and do **COVENANT NOT TO SUE** the Addison Persons (or any of them) for, any and all claims, liability, judgments, lawsuits, demands, harm, losses, damages, proceedings, actions, causes of action, fees, fines, penalties, expenses, or costs (including, without limitation, attorneys fees and court costs) whatsoever for or related to any illness or injury of any kind or nature whatsoever (including, without limitation, death), or any damage to or destruction of any property, or any other harm or loss whatsoever, (collectively, "Claims"), which Shakespeare Dallas or any of its officials, officers, employees, representatives, volunteers, agents, contractors, licensees, or invitees may sustain or suffer in connection with or related to the production and the use and occupancy of the Event Site, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. **Further, without limiting any other provision of this Contract, Shakespeare Dallas shall DEFEND, INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and all other Addison Persons from any such Claims.**

Should the Show be postponed or canceled due to an Act of God, public safety, public welfare consideration, or for any other reason whatsoever, as may be determined by the City in its sole discretion and opinion, Shakespeare Dallas hereby **RELEASES** the City, its officials, officer, employees and agents from any and all liability and claims for damages (including consequential damages) or injuries of any kind whatsoever which result from such postponement or cancellation. In addition, neither party to this Contract shall be liable for damages caused by delay or failure to perform hereunder when such delay or failure to perform is due to terrorism, fire, acts of God, national emergency, war, civil disorder, labor dispute, inclement weather, any unavoidable casualties, or any causes beyond their respective control.

The provisions of this Section IV shall survive the termination or expiration of this Contract.

IV-A. SHAKESPEARE DALLAS' DEFENSE, INDEMNITY, AND

HOLD HARMLESS OBLIGATION

A. **Shakespeare Dallas covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas being each an “Addison Person” and collectively the “Addison Persons”), from and against any and all claims, liability, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the work and services of Shakespeare Dallas as set forth in Section II of this Agreement; (2) representations or warranties by Shakespeare Dallas under this Agreement; and/or (3) any other act or omission under or in performance of this Agreement by Shakespeare Dallas, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Shakespeare Dallas, or any other person or entity for whom Shakespeare Dallas is legally responsible, and their respective owners, officers, managers, employees, directors, agents, and representatives. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However when Claims arise out of the co-negligence of an Addison Person or Persons, Shakespeare Dallas’ liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Persons’ proportionate share of the negligence that caused the loss. Likewise, Shakespeare Dallas’ liability for Addison Person’s defense costs and attorneys’ fees shall be reduced by that portion of the defense costs and attorneys’ fees equal to Addison Person or Persons’ proportionate share of the negligence that caused the loss.**

B. Shakespeare Dallas shall promptly advise the Town of Addison in writing of any claim or demand against any Addison Person or Shakespeare Dallas related to or arising out of Shakespeare Dallas’s activities under this Agreement and shall see to the investigation and defense of such claim or demand at Shakespeare Dallas’s sole cost and expense. The Addison Persons shall have the right, at the Addison Persons’ option and at own expense, to participate in such defense without relieving Shakespeare Dallas of any of its obligations hereunder.

C. The provisions of this defense, indemnity, and hold harmless obligation shall survive the termination or expiration of this Agreement.

D. Shakespeare Dallas agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any claim under the provisions of any workers compensation law or other similar law, or under any plan for employee benefits which the City may have or adopt. The provisions of this paragraph shall survive the termination or expiration of this Contract.

V. INSURANCE

Shakespeare Dallas shall carry insurance, throughout the length and term of this Contract, with responsible insurance companies qualified to do business in the State of Texas, in the types and minimum amounts set forth in Section 67-16 of the Code of Ordinances of the City, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein (with the addition that the requirement for commercial general liability shall also include coverage for death); provided, however, that the City Manager may waive the requirement of any of such insurance where, in the sole opinion of the Manager, such insurance is not necessary to cover or protect a function or purpose of this Agreement. Certified copies of all such policies shall be delivered to the City no later than September 5 in years 2011, and 2012.

VI. TERMINATION

This Contract may be canceled and terminated by either party hereto for any reason or for no reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address of the party to whom the notice is sent that is shown on the records of the party terminating the Contract. The thirty (30) days period shall commence upon deposit of the said notice in the United States mail and shall conclude at the end of the 30th day following the date of such deposit.

In the event of such cancellation and termination and if Shakespeare Dallas has failed at the time of such cancellation and termination to provide in each applicable year all of the services set forth herein, Shakespeare Dallas shall promptly refund to the City a portion of funds paid to Shakespeare Dallas under the terms of this Contract in accordance with the following:

A. Regarding the initial payment of \$15,500 (the "initial annual payment") in each applicable year, if the then applicable show (e.g., *Hamlet* for 2011) is canceled or this Contract is terminated during the month of:

February of the applicable year, Shakespeare Dallas shall refund to the City the entire initial annual payment;

March of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$13,562.50;

April of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$11,625.00;

May of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$9,687.50

June of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$7,750.00;

July of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$5,812.50;

August of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$3,875.00;

September of the applicable year, Shakespeare Dallas shall refund to the City the sum of \$1,937.50.

B. Regarding any payment by the City under or pursuant to this Contract following the initial annual payment, if the then applicable show is either not performed or not performed on all dates set forth in this Contract, or if this Contract is terminated following the making of any such payment, Shakespeare Dallas shall refund to the City a portion of such payment equal to (i) the number of shows not performed, (ii) divided by the number of shows which should have been performed pursuant to this Contract, (iii) times the amount of such payment. For example:

(1) if the City has paid the sum of \$15,500.00 following the initial annual payment, and if the applicable show for 2010 (*Hamlet*) is canceled in its entirety so that none of the performances set forth in this Contract (10 of them as set forth in Section II.A. of this Contract) are given, Shakespeare Dallas shall refund to the City the sum of as follows: $10 \text{ shows not performed} / 10 \text{ shows that should have been performed} \times (\text{times}) \$15,500.00$, or \$15,500.00.

(2) if the City has paid the sum of \$15,500.00 following the initial annual payment, and if the applicable show for 2010 (*Hamlet*) is canceled in part so that only 5 of the performances set forth in this Contract (10 of them as set forth in Section II.A. of this Contract) are given, Shakespeare Dallas shall refund to the City the sum of as follows: $5 \text{ shows not performed} / (\text{divided by}) 10 \text{ shows that should have been performed} \times (\text{times}) \$15,500.00$, or \$7,750.00.

All refund or repayments shall be made not later than ten (10) days following demand by the City for the same. This refund or repayment obligation shall survive the termination or expiration of this Contract.

VII. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VIII. ACCOUNTING

Prior to adopting its annual budget, Shakespeare Dallas shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Shakespeare Dallas shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Shakespeare Dallas from the funds provided by the City. The approval

of Shakespeare Dallas's annual budget creates a fiduciary duty in Shakespeare Dallas with respect to the funds provided by the City under this Contract.

Funds received hereunder from the City may be spent for day-to-day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Shakespeare Dallas shall maintain complete and accurate financial records of all of its revenues, including, without limitation, expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of the Show, Shakespeare Dallas shall provide the City a detailed financial report for the Show, in form and content acceptable to the City, listing the expenditures made by Shakespeare Dallas of the funds paid to Shakespeare Dallas under this Agreement. The City shall have the right to audit the books and records of Shakespeare Dallas relating to this Contract and the services provided by Shakespeare Dallas hereunder upon providing Shakespeare Dallas with ten (10) days prior notice thereof, and for that purpose Shakespeare Dallas shall provide all of such books and records for such audit at its offices located at the address set forth below in Section XX, Notices.

IX. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Shakespeare Dallas is that of independent contractor, and the City and Shakespeare Dallas by the execution of this Contract do not change the independent status of Shakespeare Dallas. No term or provision of this Contract or action by Shakespeare Dallas in the performance of this Contract shall be construed as making Shakespeare Dallas the agent, servant or employee of the City, and nothing herein shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the parties hereto.

X. NON-ASSIGNABILITY

Shakespeare Dallas may not and shall have no authority to assign, transfer, sell, pledge, or otherwise convey this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any such assignment, transfer, sale, pledge, or other conveyance in violation hereof shall entitle the City to immediately terminate this Contract, and upon such termination all funds paid to Shakespeare Dallas shall be promptly reimbursed to the City.

XI. NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Contract shall be deemed to constitute that the City and Shakespeare Dallas are partners or joint venturers with each other, or to constitute a joint enterprise.

XII. COPYRIGHT; MARKS

Shakespeare Dallas assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Shakespeare Dallas', transmissions or

broadcasts, and Shakespeare Dallas, without limiting any other indemnity given by Shakespeare Dallas as set forth herein, agrees to **DEFEND, INDEMNIFY, AND HOLD HARMLESS** the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Shakespeare Dallas's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

In connection with the Show, each party grants to the other party a non-exclusive, non-transferable, royalty-free right and license to reproduce, publish and display, in accordance with and subject to the terms and conditions of this Contract and solely for the limited purposes set forth herein, the party's trademarks, service marks, logos, or other content (together, "Marks") provided in connection with advertising of the Show as described herein. Such reproduction, publication, display or use shall be subject to the approval of the party which is the owner of the Logos. Except for the express license rights granted herein, all right, title and interest in and to the Marks shall remain in the respective party who owns the Marks. Neither party hereto shall copy, distribute, reproduce, display, or use any Marks except as expressly permitted under this Agreement. Each party hereto acknowledges the other party's rights and interests in and to such other party's Marks and agrees not to claim any right, title or interest in or to such Marks or to at any time challenge such other party's rights in or to such Marks for any reason whatsoever. All use of either party's Marks or the goodwill generated thereby shall inure to the benefit of the respective party which owns such Marks.

Each party hereto represents that its execution and delivery of this Agreement, and its performance hereunder, will not violate or conflict with (i) any other contract or agreement to which it is a party, or (ii) the intellectual property rights or other rights of any third party.

XIII. NON-DISCRIMINATION

During the term of this Contract, Shakespeare Dallas agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIV. LEGAL COMPLIANCE

Shakespeare Dallas shall observe and abide by all applicable federal laws, state statutes and the Charter and Ordinances of the City, and all rules and regulations of any lawful regulatory body acting thereunder in connection with the services performed.

XV. APPLICABLE LAWS

This Contract is made subject to the provisions of the Charter and ordinances of the City, as amended, and all applicable state and federal laws.

XVI. VENUE

Venue for any action or claim brought on or under this Contract shall lie exclusively in Dallas County, Texas.

XVII. COUNTERPARTS

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

XVIII. GOVERNING LAW

This Contract shall be governed by and construed under the laws of the State of Texas, without regard to choice of law rules of any jurisdiction.

XIX. NO WAIVER; SURVIVABILITY; NO THIRD PARTY BENEFICIARIES

The failure by either party to exercise any right, power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law. Any rights, remedies, duties, or obligations either party may have with respect to the other arising out of the performance of or in connection with this Contract shall survive the cancellation, expiration or termination of this Contract.

This Contract is solely for the benefit of the parties hereto and is not intended and shall not be construed to create or to grant any rights, duties, or obligations, contractual or otherwise, to any third person or entity.

XX. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Shakespeare Dallas agree to provide the other with written notification within five (5) days, if the address, provided below, is changed. Mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the fifth (5th) day after mailing.

The City's address:

Assistant City Manager
Town of Addison
Post Office Box 9010
Addison, Texas 75001-9010

Shakespeare Dallas' address:

Executive and Artistic Director
Shakespeare Dallas
3630 Harry Hines Blvd., 4th Floor
Dallas, Texas 75219

XXI. LEGAL CONSTRUCTION; SEVERABILITY

The terms of this Contract are severable, and if any article, clause, paragraph, section or other 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.

XXII. AUTHORITY TO EXECUTE 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.

XXIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the City and Shakespeare Dallas 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 the City and Shakespeare Dallas

IN WITNESS THEREOF, the parties hereto have caused this agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

SHAKESPEARE DALLAS

By: _____
Chris Terry, Assistant City Manager

By: _____

Its: _____

ATTENDANCE SUMMARY

The following provides an attendance summary for the past several years:

2010	2009	2008	2007	2006	2005
Verona	Caesar	Merchant	Macbeth	Much Ado	12th Night
3,846	3,796	4,059	2,899	2,132	1,799

FUNDING

Budget	Event Date	Production	Deposit \$ / Due Date	Final \$ / Due Date	FY Budget
\$46,500	October 6-10 & 13-17, 2010	Two Gentlemen of Verona	\$15,500 Feb 2010	\$31,000 Oct 2010	FY 09-10 (prior FY)
\$46,500	October 5-9 & 12-16, 2011	Hamlet	\$15,500 Feb 2011	\$31,000 Oct 2011	FY 10-11 (current FY)
\$46,500	October 3-7 & 10-14, 2012 (tentative)	TBD	\$15,500 Feb 2012	\$31,000 Oct 2012	FY 11-12 (Future FY) FY 12-13 (Future FY)

Council Agenda Item: #R 2c

AGENDA CAPTION:

Approval of the publication of the Town's check register online.

FINANCIAL IMPACT:

There is a non-recurring programming cost of \$4,000 to develop a searchable database of the online check register. This expense was not anticipated in the 2011 Finance department budget and may require a mid-year budget adjustment.

BACKGROUND:

The Comptroller of Public Accounts launched the Texas Comptroller Leadership Circle program in December 2009 to recognize local governments across Texas that are striving to meet a high standard for financial transparency online. In order to receive the Gold award, the Town must post its check register online, in this case the Town's web site.

The register will include all outlays of public funds processed through the Town's accounts payable function.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

[Sample Check Register](#)

Type:

Exhibit

FY 2011 Check Register
Sample Check Run 12/3/2010

Check Date	Check Number	Vendor Name	Check Amount
12/3/2010	66195	ADDISON CONFERENCE CENTRE	\$ 301.15
12/3/2010	66198	ALBERTSON'S	\$ 1,504.25
12/3/2010	66199	ALPHA LOCK SECURITY	\$ 273.00
12/3/2010	66200	AMERICAN LANDSCAPE SYSTEMS, INC	\$ 270.00
12/3/2010	66202	BRIDE & GROOM MAGAZINE, INC	\$ 1,134.00
12/3/2010	66204	CAVANAUGH FLIGHT MUSEUM	\$ 50,000.00
12/3/2010	66205	CINTAS CORPORATION NO. 2	\$ 229.43
12/3/2010	66221	COSTAR REALTY INFORMATION, INC	\$ 535.72
12/3/2010	66222	COWLES & THOMPSON	\$ 31,839.19
12/3/2010	66223	DALLAS CENTRAL APPRAISAL DISTRICT	\$ 19,849.00
12/3/2010	66224	DALLAS COUNTY	\$ 639.37
12/3/2010	66225	DALLAS SECURITY SYSTEMS, INC	\$ 61.00
12/3/2010	66227	DEPT OF INFORMATION RESOURCES	\$ 897.26
12/3/2010	66232	DIANA M GEORGE	\$ 294.50
12/3/2010	66201	DRINKING WATER SYSTEMS UNLIMITED, LLC	\$ 42.00
12/3/2010	66238	DUNNE ENGINEERING, INC.	\$ 25,670.31
12/3/2010	66228	EAGLE EXPRESS, INC	\$ 21.19
12/3/2010	66229	EMERGENCY VEHICLE EQUIPMENT	\$ 55.00
12/3/2010	66230	FEDERAL EXPRESS CORPORATION	\$ 76.36
12/3/2010	27381	FIRST SOUTHWEST ASSET MGMNT-WIRES	\$ 4,995,095.83
12/3/2010	66231	GARVER, LLC	\$ 1,616.50
12/3/2010	66233	HALFF ASSOCIATES, INC	\$ 8,903.99
12/3/2010	66236	HOTEL INTER-CONTINENTAL	\$ 6,194.00
12/3/2010	66237	HUFFINES DODGE PLANO	\$ 1,822.72
12/3/2010	27378	ICMA - RC SERVICES (DEFERRED COMP)	\$ 67,194.79
12/3/2010	66239	ILLUMINATIONS BY GREENLEE	\$ 450.00
12/3/2010	66240	IMPLEMENTATION RESOURCES, INC	\$ 192.00
12/3/2010	27377	INTERNAL REVENUE SERVICE-EFTPS	\$ 71,228.06
12/3/2010	66241	KIM DAWSON AGENCY	\$ 760.00
12/3/2010	66242	KLEINFELDER INC.	\$ 24,025.00
12/3/2010	66243	LUCKY LADY OIL CO	\$ 3,886.20
12/3/2010	66244	LYNN PHAM & ROSS, LLP	\$ 697.50
12/3/2010	66246	MAIN AUTO PARTS	\$ 129.28

FY 2011 Check Register
Sample Check Run 12/3/2010

Check Date	Check Number	Vendor Name	Check Amount
12/3/2010	66257	MARISA PERRY	\$ 65.72
12/3/2010	66248	MCCREARY & ASSOCIATES,INC	\$ 3,257.50
12/3/2010	66249	METRO PCS	\$ 400.47
12/3/2010	66250	METROCREST CHAMBER OF COMMERCE	\$ 10,000.00
12/3/2010	66259	MICHAEL L RECKER	\$ 500.00
12/3/2010	66251	MILLION AIR	\$ 100.00
12/3/2010	66253	NATIONAL ARBOR DAY FOUNDATION	\$ 15.00
12/3/2010	66254	NATIONAL PUMP & COMPRESSOR	\$ 368.44
12/3/2010	66255	OLMSTED-KIRK PAPER	\$ 648.03
12/3/2010	66256	PALM SPRINGS POOL SERVICE	\$ 105.00
12/3/2010	66258	PROTEC SERVICES, LLC	\$ 931.50
12/3/2010	66260	REDSALSA TECHNOLOGIES	\$ 4,050.00
12/3/2010	66261	RESERVE ACCOUNT	\$ 25,000.00
12/3/2010	66262	RICOH AMERICAS CORPORATION	\$ 260.20
12/3/2010	66263	RODNEY HAND & ASSOCIATES MARKETING	\$ 26,250.00
12/3/2010	66264	ROSEMEADE AUTOMOTIVE, LLC	\$ 2,240.00
12/3/2010	66265	SAM PACK'S FORD COUNTRY OF LEWISVILLE	\$ 902.41
12/3/2010	66266	SHIROMA/SOUTHWEST	\$ 6,452.71
12/3/2010	66268	SPRINT SPECTRUM L.P.	\$ 1,633.39
12/3/2010	66270	TCS PLUMBING	\$ 259.00
12/3/2010	66271	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	\$ 325.00
12/3/2010	66272	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	\$ 100.00
12/3/2010	66273	TEXAS COMMISSION ON FIRE PROTECTION	\$ 35.00
12/3/2010	66245	TEXAS M&M ACQUISTIONS LLC	\$ 1,443.73
12/3/2010	66275	TEXAS MUNICIPAL CLERKS CERTIFICATION PROGRAM	\$ 15.00
12/3/2010	27382	TEXAS MUNICIPAL RETIREMENT SYSTEM	\$ 311,385.92
12/3/2010	27383	TEXPOOL/WIRES	\$ 1,000,000.00
12/3/2010	27384	TEXSTAR/ACH-WIRES	\$ 5,000,000.00
12/3/2010	27385	TEXSTAR/ACH-WIRES	\$ 1,000,000.00
12/3/2010	66247	THE MARGULIES COMMUNICATIONS GROUP	\$ 3,500.00
12/3/2010	66276	TOWN OF ADDISON	\$ 53,596.80
12/3/2010	66277	TRINKETS & TREASURE	\$ 683.96
12/3/2010	66278	TRUETT-WORRALL CO	\$ 616.19

FY 2011 Check Register
Sample Check Run 12/3/2010

Check Date	Check Number	Vendor Name	Check Amount
12/3/2010	66267	U. H. SPECHT	\$ 1,300.00
12/3/2010	66279	UDR, INC.	\$ 23,370.98
12/3/2010	66280	UNIFORMS INC	\$ 176.00
12/3/2010	66281	US POST OFFICE	\$ 770.00
12/3/2010	66282	VERIZON WIRELESS	\$ 80.98
12/3/2010	66203	VIRGIL BURKHARDT	\$ 85.00
12/3/2010	66283	VIRGINIA WALLACE	\$ 120.00
12/3/2010	66234	WILLIAM HAMILTON	\$ 317.00

Council Agenda Item: #R 2d

AGENDA CAPTION:

Approval of the purchase of (1) 2011 Crane Truck under the Town's Inter-local Agreement with the Texas Local Government Purchasing Cooperative - known as BuyBoard in the amount of \$96,484.00.

FINANCIAL IMPACT:

Utilities Fund - Budgeted Amount: \$102,000.00 Utilities (Crane Truck) Cost: \$ 96,484.00

BACKGROUND:

At the January 11, 2005 Council meeting, the Town approved a resolution to join the Texas Local Government Purchasing Cooperative - better known as BuyBoard. BuyBoard issues request for bids for vehicles and equipment every year and receives extremely competitive prices because of the large volume of purchases they generate. This is a comparable purchasing method to those purchases done through the Houston Galveston Area Council. By participating in a cooperative, we are able to receive better prices on items we need and in some cases without the effort of seeking formal quotes or bids.

State statute exempts the Town from formal bid requirements when purchasing through the Inter-local Agreement with BuyBoard.

The 2011 Crane Truck is for the Utilities Division of Public Works and replaces a 2002 Crane Truck. The 2002 vehicle will be auctioned at the next Town vehicle auction.

There are sufficient funds in the Utilities Fund to cover the recommended expenditure of \$96,484.00.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible

Manner

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R 2e

AGENDA CAPTION:

Approval of the purchase of (1) 2011 Ambulance, (1) 3/4 Ton Fleet Service Truck, (1) 3/4 Ton Truck and (6) equipment attachments for the airport tractors under the Town's Interlocal Agreement with the Houston-Galveston Area Council (HGAC) in the amount of \$236,550.01.

FINANCIAL IMPACT:

See attached funding information.

BACKGROUND:

HGAC issues request for bids for vehicles and equipment every year and receives extremely competitive prices because of the large volume of purchases the council generates. In the past, the prices received from HGAC have been 25% below the manufacturer's suggested prices. State statute exempts the Town from formal bid requirements when purchasing through the Interlocal Agreement with HGAC.

The 2011 Ambulance replaces the current 2003 Reserve Ambulance and a current 2005 Ambulance will become the Reserve. The 2011 ¾ ton fleet service truck replaces a 1996 service truck for Fleet Services.

The airport tractor(s) equipment attachments include; a rotary tiller, front blade, scarifier box blade, rear blade, 8' landscape rake, snow plow blade. The replaced vehicles will be auctioned at the next Town auction.

There are sufficient funds in the Capital Equipment Replacement Fund and Airport Fund to cover the total recommended expenditure of \$236,550.01.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

[Fleet Vehicle Purchases HGAC Funding](#)

Type:

Backup Material

Capital Equipment Replacement Fund -	Budgeted Amount:	<u>\$140,000.00</u>
Fire (Ambulance)	Cost:	<u>\$147,175.00</u>
Capital Equipment Replacement Fund -	Budgeted Amount:	<u>\$ 40,000.00</u>
General Services (3/4 Ton Truck)	Cost:	<u>\$ 40,252.00</u>
Utilities Fund -	Budgeted Amount:	<u>\$ 35,000.00</u>
Utilities (3/4 Ton Truck)	Cost:	<u>\$ 29,543.00</u>
Airport Fund -	Budgeted Amount:	<u>\$ 36,000.00</u>
Airport (Equipment Attachments)	Cost:	<u>\$ 19,580.01</u>

Council Agenda Item: #R 2f

AGENDA CAPTION:

Approval of a contract with Elite Landscaping totaling \$828,871.00 for construction of the Redding Trail Extension and George H.W. Bush Elementary landscaping and playground improvements.

FINANCIAL IMPACT:

TBG Partners estimated the probable cost at \$1,180,000. A bid tabulation form and a project funding summary are attached. The funding sources consist of the Parks Capital Projects Fund, DISD Interlocal Agreement contribution, Dallas County 50% matching grant and the NCTCOG Sustainable Grant Program.

BACKGROUND:

This project will consist of construction of the Redding Trail extension from the existing Redding Trail on the northwest corner of Greenhill School to the intersection of Spring Valley Road and Vitruvian Way. The trail will connect to the George H.W. Bush playground area, and will extend from the playground area along the east side of the school to the newly aligned Spring Valley Road intersection. TBG Partners landscape architects provided the design, and they also designed the Spring Valley Road intersection and streetscape to ensure continuity with the school campus design.

The campus improvements will include landscaping, irrigation, two playgrounds for ages 2-5 and 5-12, a learning garden and sport fields. Staff has been working closely with DISD representatives, Greenhill School, UDR and Oncor Electric to coordinate all aspects of the project.

Construction will begin in January 2011 and should be completed by July 1, 2011 weather permitting.

Staff completed reference checks on Elite Landscaping, and all were favorable. In addition to reference checks, TBG Partners representatives and staff interviewed Elite representatives and visited several sites in McKinney to take a look at the quality of their work on previous projects with similar scope. The work observed was of excellent quality.

RECOMMENDATION:

Staff completed reference checks on Elite Landscaping, and all were favorable. In addition to reference checks, TBG Partners and staff interviewed Elite Landscape representatives and, visited several sites in McKinney to take a look at the quality of their work on previous projects with similar scope.

Staff recommends approval based on findings from the background review.

COUNCIL GOALS:

Promote Quality Transportation Services, Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents

ATTACHMENTS:

Description:

- [Bid Tabulation](#)
- [Project Funding Summary](#)
- [Site Plan](#)

Type:

- Backup Material
- Backup Material
- Backup Material

Redding Trail - Bush Elementary Landscaping

BID NO 11-01

DUE: November 4, 2010

2:00 PM

Bidder	Base Bid and Add Alternates
Elite Landscape	\$ 828,871
C. Green Scaping, LP	\$ 938,380
Hadden Landscaping	\$ 964,640
JDC Construction Co	\$ 1,191,928
Geotechnical Environmental	\$ 1,297,355
Cole Construction	\$ 1,082,267
North Texas Contracting	\$ 1,079,675
Austin Filter Systems, Inc	\$ 1,035,313
Irricon	\$ 1,203,332
Northstar Construction, Inc	\$ 1,011,019

Matthew E. McCombs

Matt McCombs, Management Analyst

Slade Strickland

Witness

George H.W. Bush Elementary and Redding Trail Extension

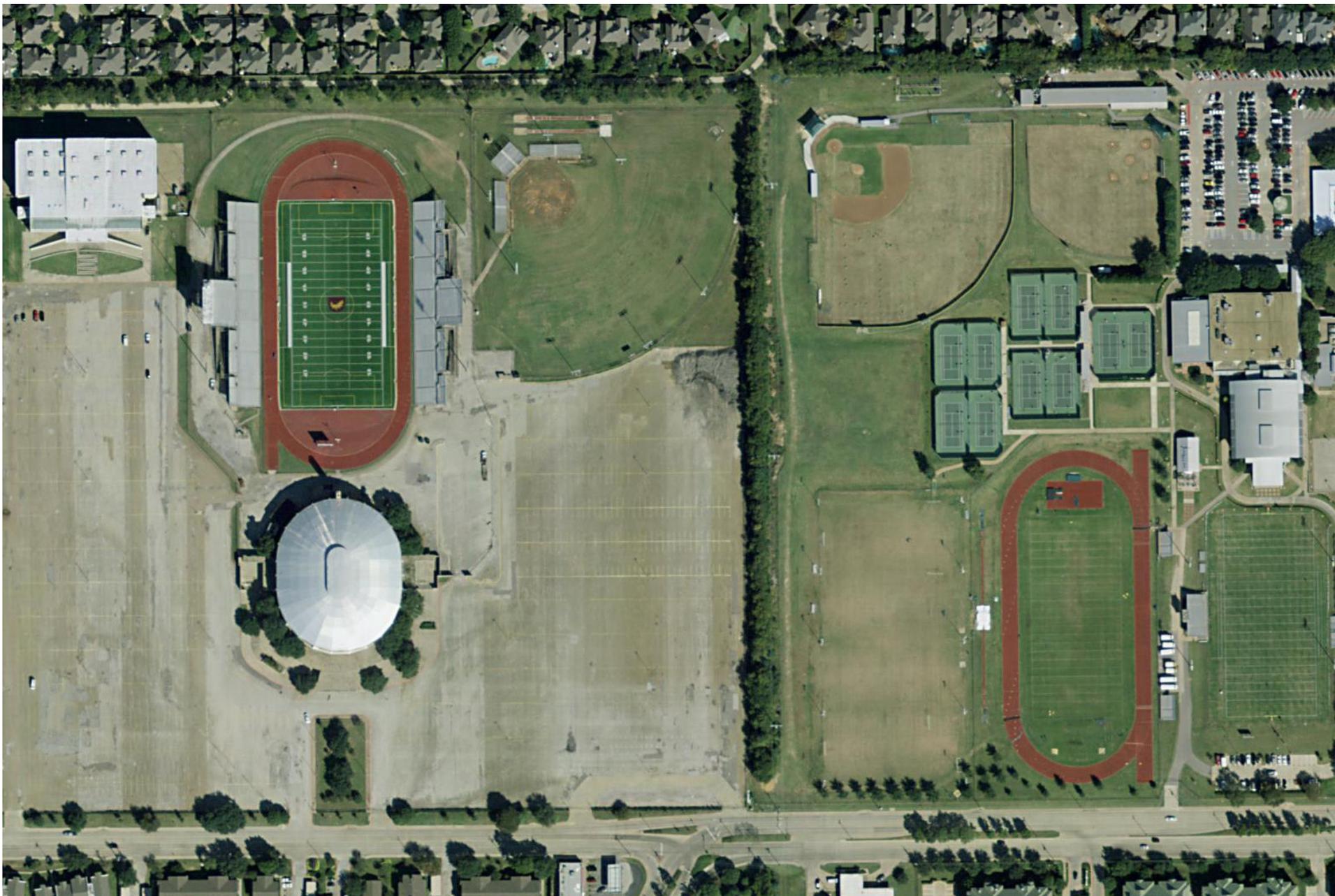
Funding Summary

Available Funds:

Parks Capital Improvements Project Funds:	\$131,326.00
DISD Interlocal Agreement Contribution:	\$241,321.00
Dallas County:	\$106,224.00
NCTCOG Sustainable Development Grant:	<u>\$350,000.00</u>
Total:	\$828,871.00

Construction Cost:

Bush Elementary Improvements:	\$507,754.50
Redding Trail Improvements:	<u>\$321,116.50</u>
	\$828,871.00

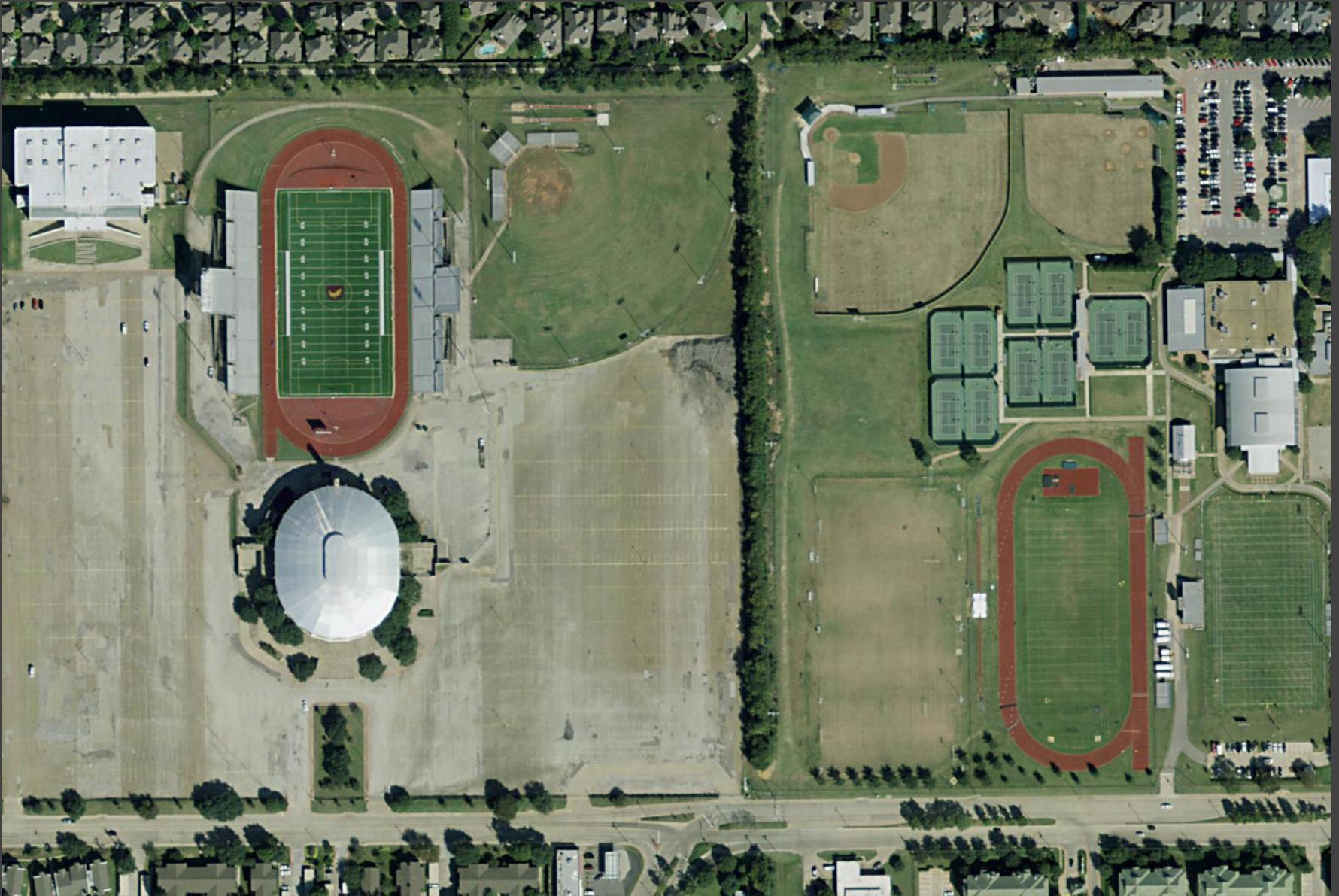


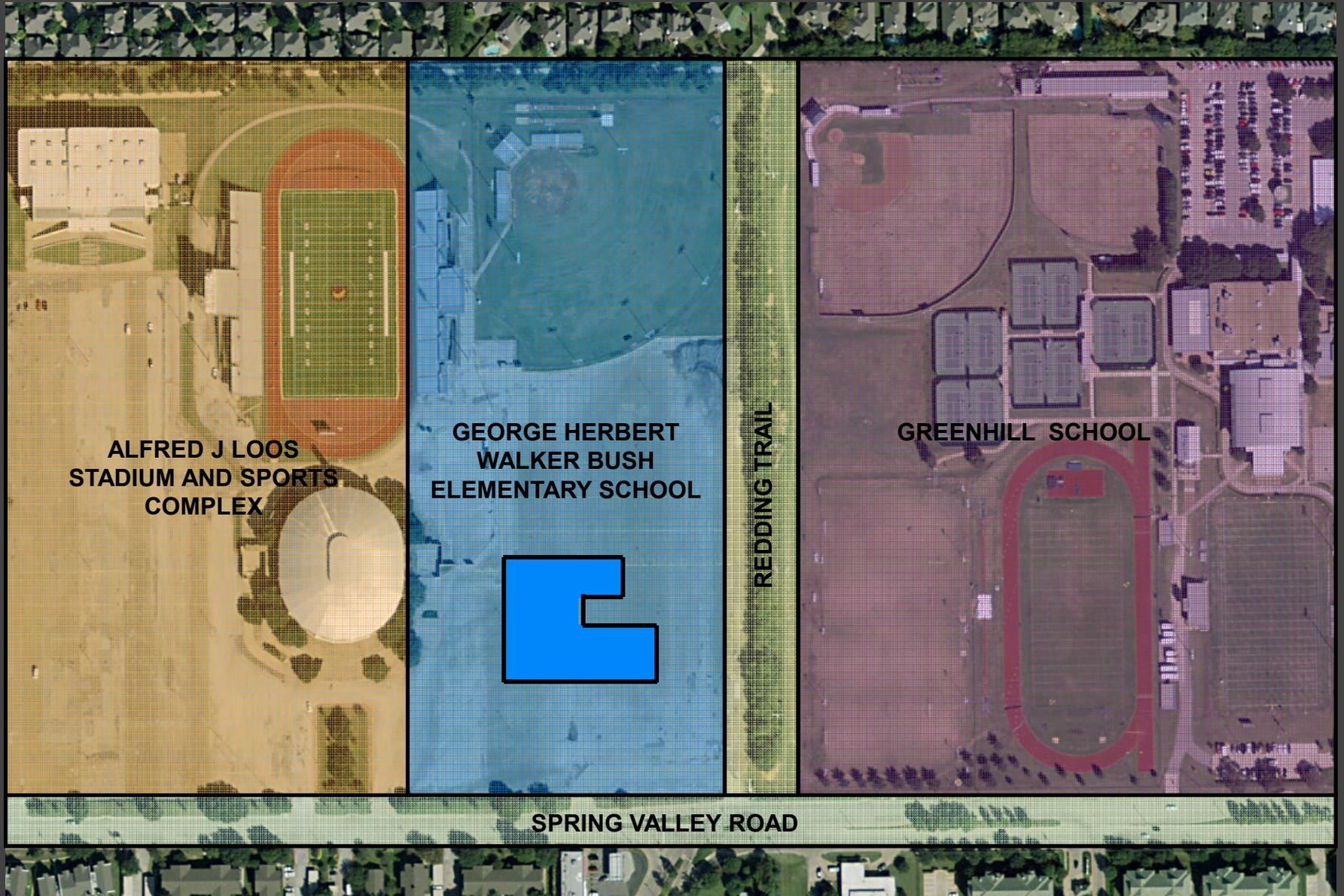
TOWN OF ADDISON: GEORGE HERBERT WALKER
BUSH ELEMENTARY SCHOOL & REDDING TRAIL

August 10, 2010

Addison![®]

T B G





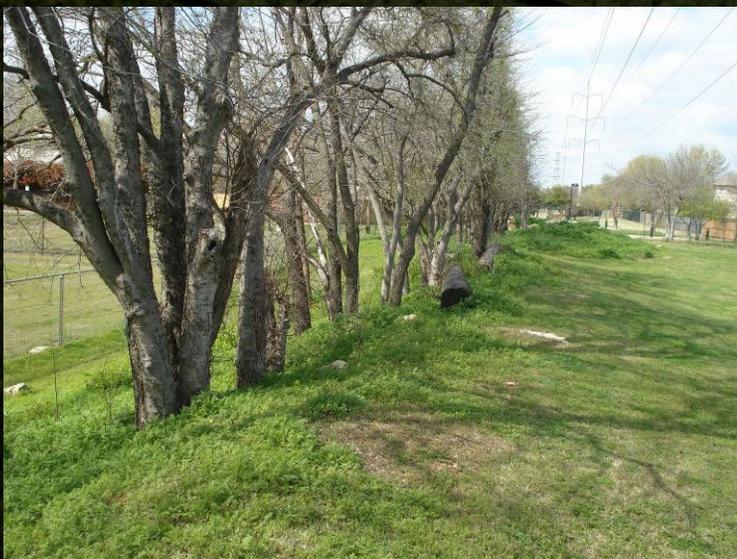
ALFRED J LOOS
STADIUM AND SPORTS
COMPLEX

GEORGE HERBERT
WALKER BUSH
ELEMENTARY SCHOOL

REDDING TRAIL

GREENHILL SCHOOL

SPRING VALLEY ROAD







MASTER PLAN







Town of Addison
G.B. School
Playground Design #1

Scale 1"=30'
06.10.2010



Council Agenda Item: #R 2g

AGENDA CAPTION:

Approval of a Trail and Lighting Easement Agreement between the Town of Addison and Greenhill School for the construction of the Redding Trail Extension.

FINANCIAL IMPACT:

A ten dollar fee will be required as described on page 1 of the agreement.

BACKGROUND:

This agreement will allow the Town to construct the proposed Redding Trail Extension within the 60 feet wide Oncor Electric Transmission Easement on the far west side of the Greenhill School campus and the new George H.W. Bush Elementary site. Exhibit A on the attached agreement shows the area proposed for the trail improvements.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services, Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

ATTACHMENTS:

Description:

[Agreement](#)

Type:

Backup Material

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.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

After Recording Return To:
Mr. Slade Strickland
Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001

TRAIL AND LIGHTING EASEMENT AGREEMENT

DATE: November 1, 2010

GRANTOR: Greenhill School
4141 Spring Valley Road
Addison, Texas 75001
(Dallas County, Texas)

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

GRANTOR'S LIENHOLDER(S): None.

CONSIDERATION:

Ten and No/100 Dollars (\$10.00), the benefits flowing to each of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

TRAIL EASEMENT PROPERTY:

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

LIGHTING EASEMENT PROPERTY:

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

TRAIL EASEMENT PURPOSE: For recreational and athletic trail and right-of-way and related uses, including, without limitation, for pedestrian walking, running, bicycling, hiking, ingress and egress, and for the installation, construction, reconstruction, maintenance, replacement, repair, upgrading, alteration, protection, inspection, operation, use, and removal of facilities, improvements, equipment, property, and materials in connection therewith, including, without limitation, improved trail surfaces, steps, railings, benches, trail connections, rest areas, canopies, statues, water fountains,

landscaping, irrigation, lighting, signs, fencing, gates, barriers, and appurtenances thereto (collectively, the "Trail Facilities"), and customary uses attendant thereto.

LIGHTING EASEMENT PURPOSE: For lighting of, for, and to the Trail Easement Property, and including, without limitation, the use, installation, construction, reconstruction, maintenance, replacement, repair, upgrading, alteration, protection, inspection, operation, use, and removal of lights and light poles, facilities, improvements, equipment, property, and materials in connection therewith (collectively, the "Lighting Facilities"), and customary uses attendant thereto.

RESERVATIONS FROM CONVEYANCE:

None.

EXCEPTIONS TO WARRANTY: Electric power line easement to Texas Power & Light Company, dated May 26, 1970, recorded in Volume 70110, Page 1195 of the real property records of Dallas County, Texas ("Exceptions to Warranty").

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

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

TERMS AND CONDITIONS: Except as otherwise set forth herein, the following terms and conditions apply to the Trail Easement and the Lighting Easement (collectively, the "Easement") granted by this instrument:

1. *Character of Easement.* The Easement is exclusive and irrevocable. The Easement is 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 use all or part of the Trail Easement Property (including, without limitation, the right to use the Trail Facilities in the same way that members of the public may use the Facilities) and the Lighting Easement Property (the Trail Easement Property and the Lighting Easement Property being collectively the "Easement Property") in conjunction with Grantee as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with or interrupt the use or enjoyment of the Easement and the Easement Property for the Easement Purpose by Grantee and Grantee's heirs, successors, and assigns.

The Easement Property is a portion (and being the westernmost portion) of the Greenhill School Addition, an addition to the Town of Addison, Texas, as shown on and described in that Replat thereof filed in Book 96180, Page 5215 (the same being Instrument #199601801535) of the Official Public Records of Dallas County, Texas (the "Greenhill Property"). So long as that portion of the Greenhill Property save and except the Easement Property (the "Remaining Greenhill Property") that abuts the Easement Property is used by Grantor for private school purposes, Grantor shall at all times have pedestrian access to the Easement Property from the Remaining Greenhill Property. Such access may be through a gate in the Fence (as hereinafter defined) that may be and remain locked at times when Grantor is not accessing the Easement Property.

4. *Secondary Easement.* Grantee has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary in connection with the Easement and the Easement Purpose. However, Grantee must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.*

(a) Grantee has the right to eliminate any encroachments into the Easement Property, including, without limitation, the right to remove any and all fencing, paving, trees and undergrowth, and other obstructions that may injure or damage or tend to injure or damage the Trail Facilities and/or the Lighting Facilities (collectively, the "Facilities"), or interfere with the installation, construction, reconstruction, maintenance, replacement, repair, upgrading, alteration, protection, inspection, operation, use, or removal thereof. Grantor agrees, for the consideration set forth herein, not to construct or place within the Easement Property any buildings, structures, fences, property, 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, property, or other improvement, or any shrub, tree, or other growth, 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 Facilities described herein or the exercise of Grantee's

rights hereunder. Grantee shall at its sole cost and expense maintain and keep the Facilities in good order, condition and repair.

(b) There is included in Exhibit A attached hereto a "Fencing and Lighting Design Section" that shows, among other things, a vinyl-coated chain link fence (the "Fence") being located on and within the Trail Easement Property (the same being the west boundary line of the Lighting Easement Property) (the "Fence Location"). Grantee may install and locate the Fence at and along the Fence Location or any portion thereof, but the Fence may not be installed or located at any other location within either the Trail Easement Property or the Lighting Easement Property without Grantor's prior written approval.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunction (temporary or permanent) prohibiting interference and commanding compliance. Restraining order 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 to or 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. *Indemnification.* Grantee shall indemnify, defend (by counsel reasonably acceptable to Grantor), and hold Grantor, Grantor's partners, members, managers, employees, authorized guests, contractors, visitors and invitees (collectively, "Grantor's Indemnified Parties") harmless from and against all claims, liabilities, penalties, losses, damages, costs and expenses, claims or judgments (including, without limitation, attorneys' fees) (collectively, "Claims") to the extent the same are in connection with or arise out of the Facilities (including, without limitation, any injury to persons or damage to property), or arising from Grantee's negligence or willful misconduct in its use, maintenance or operation of the Facilities; provided, however, that Grantee shall have no duty or obligation to indemnify, hold harmless or defend Grantor or any other of Grantor's Indemnified Parties for any Claims to the extent the same are in connection with or arise out of any negligence, gross negligence, conduct that may give rise to strict liability, or willful misconduct of Grantor or any other of Grantor's Indemnified Parties. Grantor need not have first paid any such Claims in order to be defended or indemnified. Notwithstanding the foregoing, Grantee's obligation to defend, indemnify and hold harmless is subject to and is given without waiving any immunity whatsoever available to Grantee, and subject to and without waiving any defenses or tort limitations of or available to Grantee; and further, in no event shall such defense, indemnity and hold harmless exceed the monetary limitations of damages for municipalities set forth in the Texas Tort Claims Act. Additionally, there is specifically excluded herefrom, and in no event shall there be, any obligation hereunder to defend, indemnify or hold harmless for punitive or exemplary damages. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise to any other person or entity.

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

9. *Choice of Law.* This agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for all matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas.

10. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *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 remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Entire Agreement.* This agreement, together with the exhibits attached hereto, contains the entire agreement and understanding between Grantor and Grantee with respect to the subject matter 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 agreement.

13. *Legal Construction.* If any provision in this 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 agreement will be construed as if the unenforceable provision had never been a part of the 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 agreement are for reference only and are not intended to restrict or define the test of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

14. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. As of the date of this agreement and pending further notice, notices shall be sent to the following addresses:

To Grantor: Greenhill School
 4141 Spring Valley Road
 Addison, Texas 75001
 Attention: Chief Financial Officer

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

15. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

MISCELLANEOUS:

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

EXECUTED effective as of the date first written above.

GRANTOR

GREENHILL SCHOOL

By: Melissa Outh
Typed Name: Melissa Outh
Title: CFD

GRANTEE

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

STATE OF TEXAS §

§

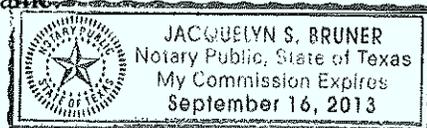
COUNTY OF DALLAS §

Before me, the undersigned Notary Public, on this day personally appeared Melissa Outh, 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.

Given under my hand and seal of office this 3RD day of December, 2010.

Jacquelyn S. Bruner
Notary Public, State of Texas
Print Name: _____

My Commission Expires:
9/16/2013



STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned Notary Public, 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.

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

Notary Public, State of Texas

My Commission Expires:

Print Name: _____

CONSENT OF BANK

JPMorgan Chase Bank, N.A. a national banking association ("Bank"), whose address is 2200 Ross Avenue, 8 Fl, Dallas, TX 75201 consents to the above grant of an Easement, including the terms and conditions of the grant, and to the recording of this instrument. The person signing on behalf of Bank hereby represents that the person has authority and is duly authorized to sign this Consent on behalf of and to bind Bank.

JPMORGAN CHASE BANK, N.A.

By: Kristen Whitehurst
Typed/printed name: Kristen Whitehurst
Title: VP

STATE OF Texas §
COUNTY OF Dallas §

Before me, the undersigned Notary Public, on this day personally appeared Kristen Whitehurst, 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.

Given under my hand and seal of office this 2 day of December, 2010.

Deborah J. Poteet
Notary Public, State of Texas

My Commission Expires:
9-2-2011

Print Name: Deborah J. Poteet

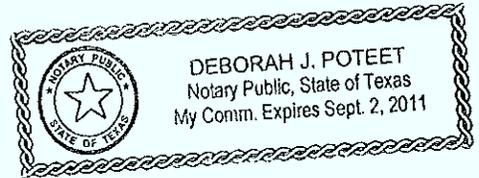
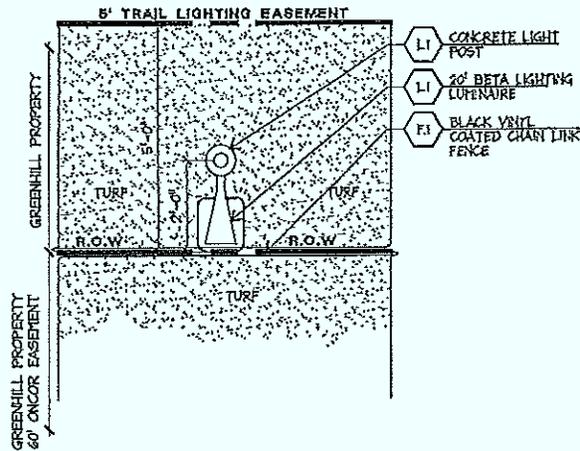


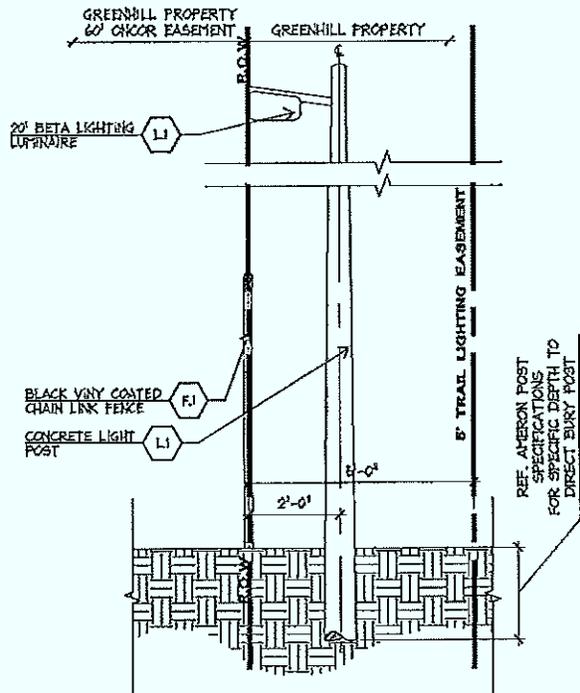
EXHIBIT "A"

That tract of land which is described by metes and bounds in that instrument recorded in Volume 70110, Page 1195 of the real property records of Dallas County, Texas, and being an electric power line easement to Texas Power & Light Company, dated May 26, 1970, and which tract is depicted on that drawing attached to this Exhibit "A" and identified as Town of Addison, Redding Trail.

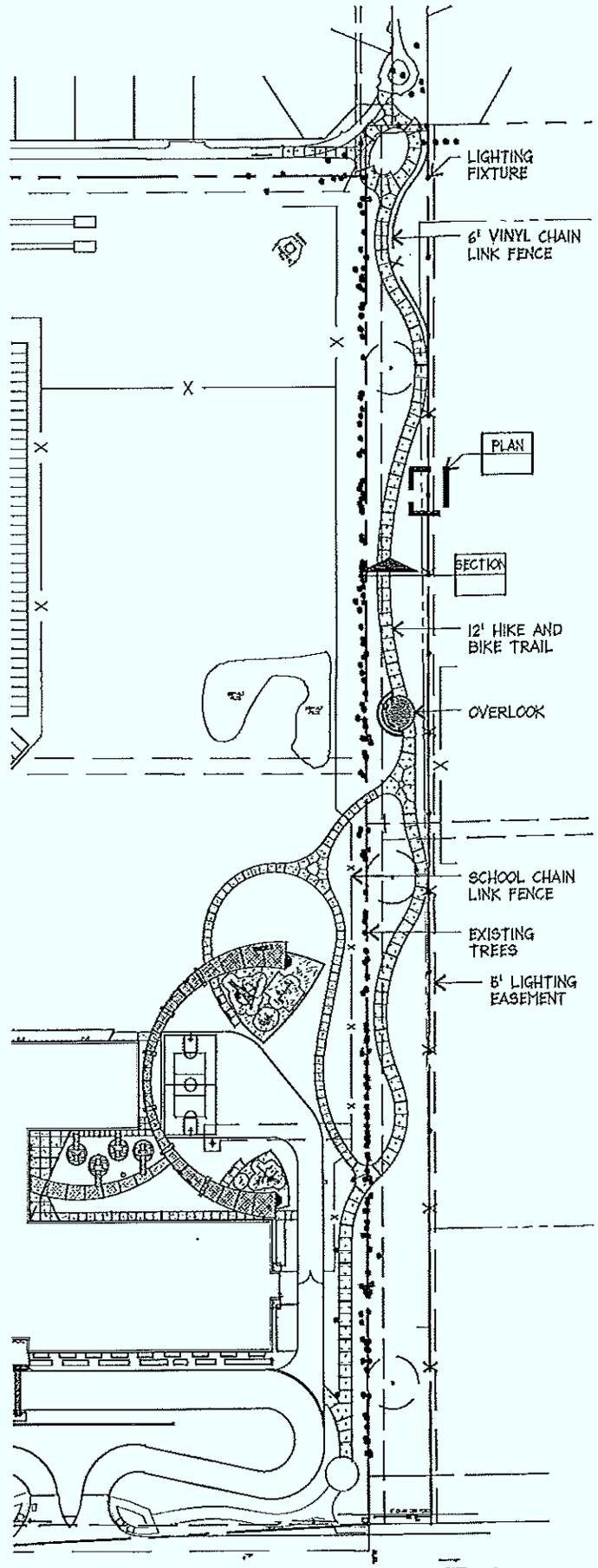
EXHIBIT A



FENCING AND LIGHTING DESIGN PLAN



FENCING AND LIGHTING DESIGN SECTION

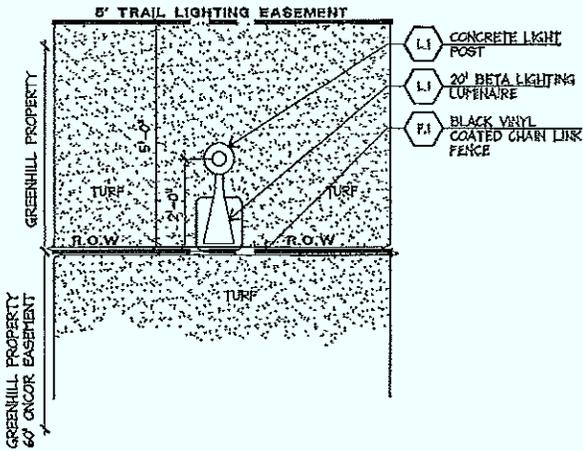


REDDING TRAIL ALIGNMENT PLAN

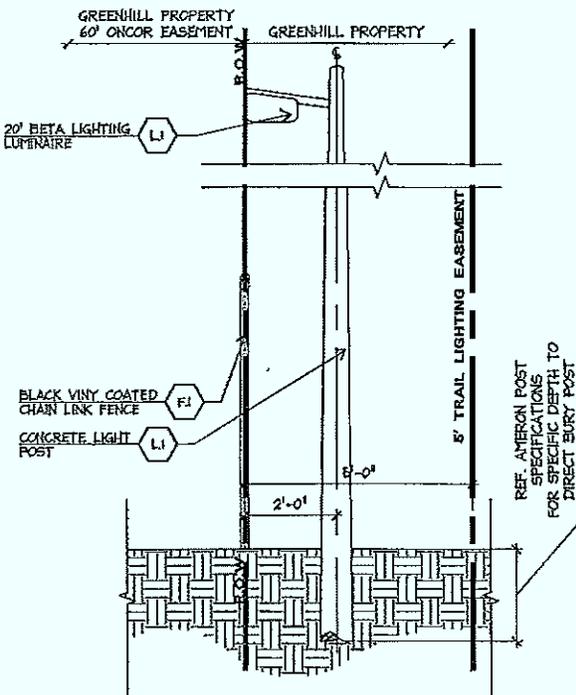
EXHIBIT "B"

A tract of land five (5) feet in width located immediately east of the Trail Easement Property described in Exhibit "A" and which abuts and runs parallel to the entire Trail Easement Property, and which tract is depicted on the drawing attached to this Exhibit "B."

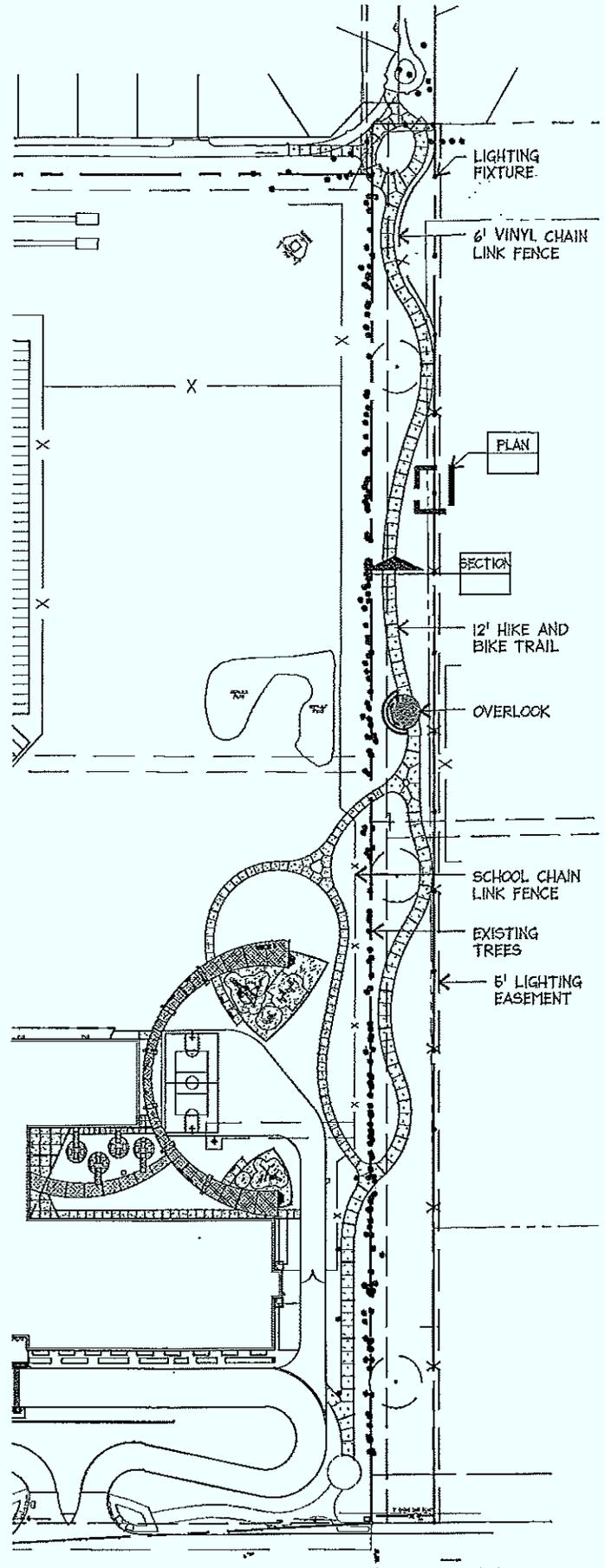
EXHIBIT B



FENCING AND LIGHTING DESIGN PLAN



FENCING AND LIGHTING DESIGN SECTION



REDDING TRAIL ALIGNMENT PLAN

Council Agenda Item: #R3

AGENDA CAPTION:

Presentation of the Certificate of Achievement for Excellence in Financial Reporting for the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2009.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

The Certificate of Achievement is awarded by the Government Finance Officers Association and is the highest form of recognition in governmental accounting and financial reporting. This is the 34th consecutive year that the Town of Addison has received the Certificate of Achievement.

RECOMMENDATION:

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

[Certificate](#)

[News Release](#)

Type:

Exhibit

Exhibit

Certificate of Achievement for Excellence in Financial Reporting

Presented to

Town of Addison
Texas

For its Comprehensive Annual
Financial Report
for the Fiscal Year Ended
September 30, 2009

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.



A stylized handwritten signature in black ink.

President

A handwritten signature in black ink, appearing to read "Jeffrey R. Emer".

Executive Director



Government Finance Officers Association
203 N. LaSalle Street - Suite 2700
Chicago, IL 60601

Phone (312) 977-9700 Fax (312) 977-4806

10/14/2010

NEWS RELEASE

For Information contact:
Stephen Gauthier (312) 977-9700

(Chicago)--The Certificate of Achievement for Excellence in Financial Reporting has been awarded to **Town of Addison** by the Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

An Award of Financial Reporting Achievement has been awarded to the individual(s), department or agency designated by the government as primarily responsible for preparing the award-winning CAFR. This has been presented to:

Randolph C. Moravec, Chief Financial Officer

The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

The GFOA is a nonprofit professional association serving approximately 17,500 government finance professionals with offices in Chicago, IL, and Washington, D.C.

Council Agenda Item: #R4

AGENDA CAPTION:

PUBLIC HEARING Case 1612-SUP/The Social House. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located in the Village on the Parkway shopping center at 5100 Belt Line Road, Suite 410, on application from SH=Addison, LLC., represented by Mr. Stephen B. Lindsey.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

-There shall be no live music allowed on the patios.

-The applicant shall not use any terms, including the term "club," or graphic depictions that denote alcoholic beverages in exterior signs.

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

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

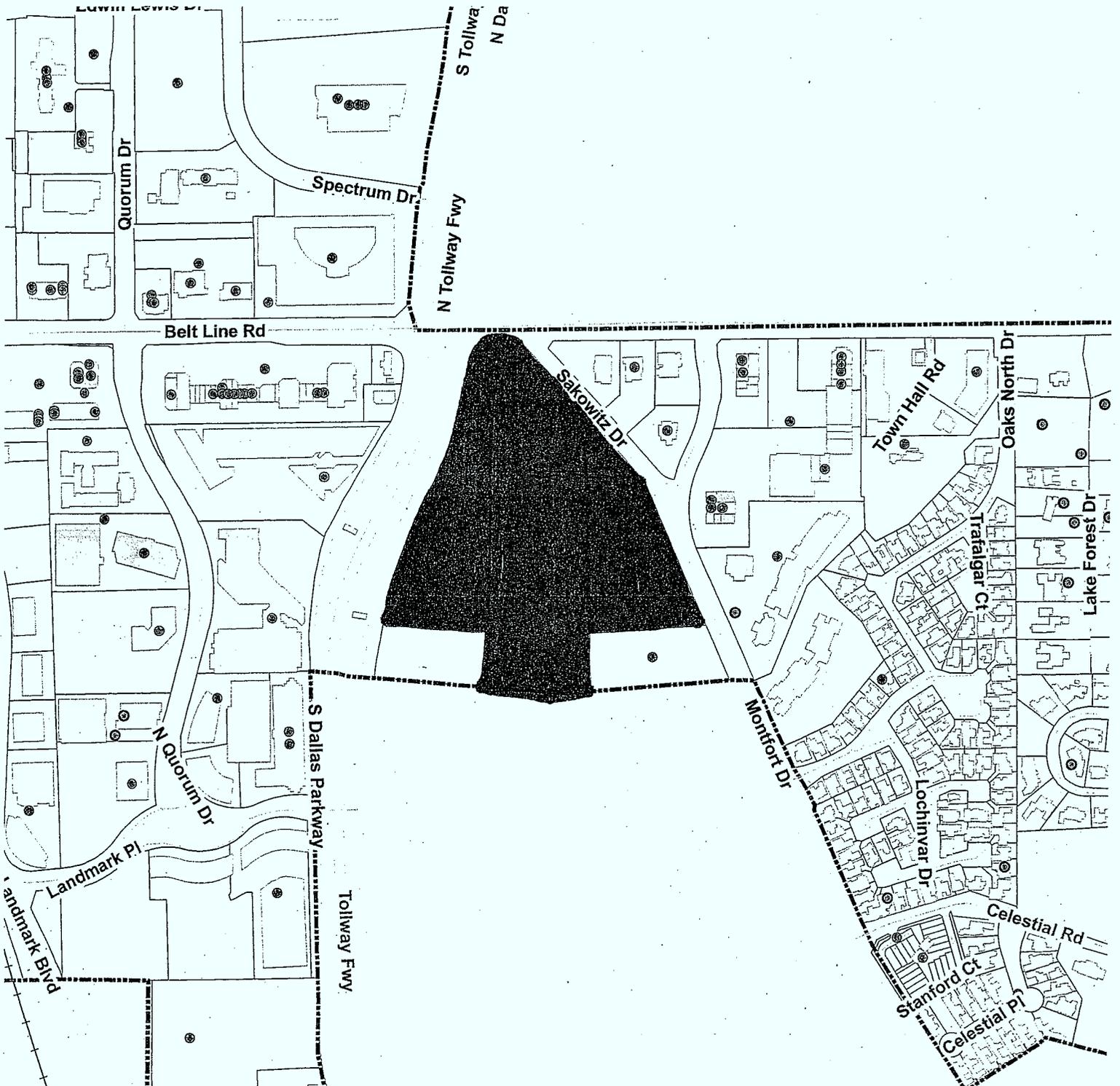
[Docket map, staff report, and commission findings](#)

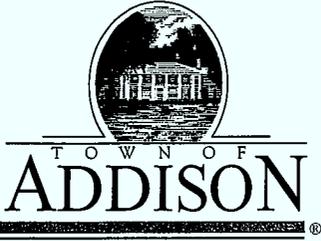
Type:

Backup Material

1612-SUP

PUBLIC HEARING Case 1612-SUP/The Social House. Requesting approval of an ordinance approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located in the Village on the Parkway shopping center at 5100 Belt Line Road, Suite 410, on application from SH=Addison, LLC., represented by Mr. Stephen B. Lindsey.





November 10, 2010

STAFF REPORT

RE: Case 1612-SUP/The Social House

LOCATION: 5100 Belt Line Road, Suite 410

REQUEST: Approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption

APPLICANT: SH Addison, LLC, represented by Mr. Stephen B. Lindsey

DISCUSSION:

Background. The applicant is proposing to reopen a space that was last occupied by Vue 972. The space was originally developed as Dalt's Restaurant. Dalt's was approved through Special Use Permit ordinance 584, which was passed by the City Council on May 13, 1980. After Dalt's closed, Lombardi Mare took over the Dalt's space, the changes were minor and cosmetic in nature. Therefore, the changes were approved administratively. In 1998, Lombardi Mare took in the adjacent lease space (Suite 420) and added a private dining room. Ordinance 098-044 approved the amendment to the SUP, which added the private dining room to the restaurant. Lombardi Mare closed in March of 2003.

The Special Use Permit was amended by Mr. Mark Kislak, (Ordinance 009-020) who opened the space as a live music venue for jazz. He closed the connection between the original restaurant and the private dining room, and reduced the size of the restaurant to 5,800 square feet plus the exiting 1,030 square-foot patio (6,830 square feet total). The space was opened as Django, and operated for a couple of years. The space then sat vacant until it was re-opened as Vue 972, which took over the same floor plan that had been operated by Django and was approved administratively. The Vue 972 operation lasted about 18 months, and the space has been vacant for the past couple of years.

The current applicant wants to remodel the space and re-open it as The Social House. The applicant currently has a Social House in Dallas in the West Village at 3699

McKinney Avenue, Suite 306. The staff looked at the web site for the restaurant to get an idea of the menu, but it said there would be a new menu coming soon.

Proposed Plan. The applicant is planning a major remodel of the space. The kitchen areas have remained the same through all remodels, and they will remain much the same for this remodel. During the Django remodel, the booths were taken out and a dance floor and large stage were installed. This remodel will take out the dance floor and large stage and restore some booth seating. The plans show two bars, a game room with one pool table, a lounge area with fireplace, an espresso/coffee station, a dessert station, two dining areas, a stage, and an outside bar with fireplace in the existing patio space. The plans also show the applicant will remove four parking spaces in front of the restaurant to add a new 686 square-foot dining patio.

Façade. The applicant submitted photos showing the proposed facades for the restaurant. He will change the windows on the west side (front) of the space to roll-up windows. He will add a new patio enclosure for the new patio. He will add new canopies and a new cover for the entrance. He will add gas fire bowls around the perimeter of the patio, and will paint the existing plaster facades.

Landscaping. The landscaping in the center was recently renovated and is generally well maintained.

Parking. The Village on the Parkway Shopping Center changed to a PD zoning district that all uses in the center to figure parking at a 1/250 ratio. This space will total 7,516 parking spaces and will require 30 spaces. This particular restaurant is located close to the large parking lot on the southeast corner of the tract, so it will have good access to a large number of spaces.

Outdoor Music The restaurant features two patios and a small stage inside the restaurant. It is located close to the Oaks North neighborhood, and the staff has a concern about noise from music impacting the residents of Oaks North. The staff recommends that there be no live music allowed on the patio. The Town has a noise ordinance, and the applicant should be aware that any noise from this operation that disturbs the neighbors will not be tolerated.

Signs. The applicant did not show any signs on the façade. The applicant should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. The applicant should also be aware that the Town has a policy against the use of any terms, or graphic depictions that denote alcoholic beverages in exterior signs.

RECOMMENDATION:

Staff recommends approval of the request for Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- There shall be no live music allowed on the patios.
- The applicant shall not use any terms, including the term "club," or graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. MORAN". The signature is stylized with a large, circular initial "C" and the name "MORAN" written in a bold, slightly slanted font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- There shall be no live music allowed on the patios.
- The applicant shall not use any terms, including the term "club," or graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood

Voting Nay: none

Absent: Arfsten

Council Agenda Item: #R5

AGENDA CAPTION:

PUBLIC HEARING Case 1611-SUP/Red Koolman's Beer and Wine. Presentation, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, located in a Local Retail (LR) zoning district at 14647 Inwood Road, on application from Tsega Berhe.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, subject to the following conditions.

-Prior to the issuance of the staff's release of the Special Use Permit, a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees.

-A new "smart" controller shall be installed on the existing irrigation system.

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

FINANCIAL IMPACT:

NA

BACKGROUND:

NA

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

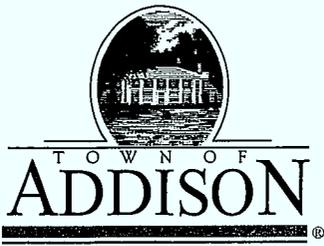
ATTACHMENTS:

Description:

[Docket map, staff report, commission findings and letter](#)

Type:

Backup Material



November 10, 2010

STAFF REPORT

RE: Case 1611-SUP/Red Koolman's Beer and Wine

LOCATION: 14647 Inwood Road

REQUEST: Approval of a Special Use Permit for the sale of alcoholic beverages for off-premises consumption

APPLICANT: Tsega Berhe

DISCUSSION:

Background. In Addison, the sale of alcohol requires a Special Use Permit, and there are two separate permits available:

(25a) Sale of alcoholic beverages for off-premises consumption only in Any Local Retail district.

(26a) Sale of beer and wine for off-premises consumption only in any Local Retail District.

The (25a) permit allows a vendor to sell beer, wine, and distilled spirits. The (26a) permit allows for the sale of beer and wine only. The applicant in this request currently has a (26a) permit, but would now like to expand his operation to sell distilled spirits. Therefore, he needs a (25a) permit.

Proposed Plan. The applicant currently operates Red Koolman's beer and wine. Red Koolman's is the company name; however, the sign on the front of the store still reads Red Coleman's Red-E Mart. He operates a 4,335 square-foot convenience store which sells only beer and wine. Since beer and wine sales will now be allowed in areas of the city other than Inwood Road, the applicant would like to expand his operation to also sell distilled spirits.

Floor Plan. The applicant did not submitted a dimensioned floor plan for the space, but it did not include fixtures. The staff assumed that the existing floor lay-out will remain as it is now.

Facades. The applicant will not be making any changes to the existing facades for the store.

Parking. The existing store is currently parked at 1 space per 200 square feet. The addition of the SUP for alcoholic beverages will not change the parking requirement for the existing store. There is sufficient parking for this use.

Landscaping. Slade Strickland met with the property owner for the center and explained that the addition of this SUP will require the center to meet the current code for landscaping. He is recommending that the applicant provide a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees. In addition, a new "smart" controller will need to be installed on the existing irrigation system.

RECOMMENDATION:

Staff recommends approval of this request for a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, subject to the following conditions.

-Prior to the issuance of the staff's release of the Special Use Permit, a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees.

-A new "smart" controller shall be installed on the existing irrigation system.

Respectfully submitted,



Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 18, 2010, voted to recommend approval of a Special Use Permit for the sale of alcoholic beverages for off-premises consumption only, subject to the following conditions.

-Prior to the issuance of the staff's release of the Special Use Permit, a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees.

-A new "smart" controller shall be installed on the existing irrigation system.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Wood

Voting Nay: none

Absent: Arfsten

Memorandum

Date: November 11, 2010
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1611-SUP/Red Koolman's Beer and Wine**

Staff recommends that the applicant provide a landscape plan showing the renovation of the street landscape buffer to include new shrubbery and ornamental trees. A new "smart" controller will need to be installed on the existing irrigation system.

JMJ Mammoth, LLC

November 8, 2010

Mrs. Carmen Moran
Director of Development Services
P.O. Box 9010
Addison, TX 75001

**Re: Case No: 1611-SUP/Red Koolman's Beer and Wine
14647 Inwood Road**

Ms. Moran:

I own the building and land next to the subject property our address is 14731-33 Inwood Road (Majestic Liquor), our tenant is in bankruptcy, their competitive advantage of selling beer and wine has now been compromised as Dallas is for all intent and purpose is "wet" and if Koolman's starts selling hard alcohol this will continue to compromise Majestic's ability to operate at this location and is sure to cause them to fail all together and Addison will yet have another boarded up building. Please do not allow this to happen as all the economic impact of Dallas becoming a "wet" city has not been realized in Addison yet.

I hope as do many owners and operators of existing liquor store locations in Addison, you will allow a period of time to pass, so the full impact of Dallas's decision to allow the sale of beer and wine settle before more competition is allowed in our backyard, further negatively impacting the existing liquor stores ability to operate.

Regards,



Joshua Levy
Managing Member
JMJ Mammoth, LLC

Council Agenda Item: #R6

AGENDA CAPTION:

Presentation, discussion and consideration of approval of the City Manager's recommended incentive compensation to Washington Staubach Addison Airport Venture for 2010 in the amount of \$162,042.00.

FINANCIAL IMPACT:

Funds are available in the Airport Fund.

BACKGROUND:

In accordance with the Third Amendment and Exhibit 3 of the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. There are two components of the incentive compensation; financial incentive and management incentive. The financial incentive portion includes certain financial performance based incentives, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations. The management incentive is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the Town's assessment of the Operator's performance and achievements during the applicable contract year. To aide the Town in its assessment of the Operator's performance and achievements, the Operator submitted to the Town an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year. This incentive compensation is for the 2010 fiscal year and a part of the previous management agreement. Beginning with this fiscal year and the new airport management agreements, the airport management team will continue to have the ability each year to earn a financial incentive under the new contracts, however, the management incentive is no longer a part of the operating agreements.

Staff met on several occasions to consider our evaluation and is in concurrence with the following recommendation of \$112,042.00 for the financial incentive and \$50,000.00 management incentive. The

Operator did earn a financial incentive as there was an 8.83% increase in gross revenue.

Staff recommends a total of \$162,042.00 for WSAAV incentive compensation for 2010.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Develop and utilize the Addison Airport as an engine to drive economic growth in the community

ATTACHMENTS:

Description:

- [M. Acevedo - Memorandum](#)
- [J. Jenkinson - Memorandum](#)
- [3rd Amendment & Exhibit 3](#)

Type:

- Backup Material
- Backup Material
- Backup Material



Memorandum

To: Ron Whitehead, City Manager
Cc: Chris Terry, Assistant City Manager
Randy Moravec, Chief Financial Officer
From: Mark Acevedo, Director of General Services
Date: December 1, 2010
Re: Washington Staubach Incentive Compensation Recommendation

BACKGROUND:

In accordance with the previous Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture (WSAAV) which ended with the fiscal year September 30, 2010, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives. As airport revenue increases, the percentage for incentive amounts increase as well. Likewise, any decrease in revenue will result in a lesser percentage for incentive. Per the Exhibit 3 of the Operating agreement, if gross revenue is 3.5% or greater than the previous year, the Operator will earn a financial incentive. Gross revenue was **8.83%** greater in 2010 therefore; the Operator has earned a financial incentive in category a) Gross Revenue Increase in the amount of **\$112,042**. For the management incentive, town staff met on several occasions to consider our evaluation and is in concurrence with recommending **\$50,000** for the management portion of the incentive program for a total of **\$162,042**. In 2009 WSAAV did not earn a financial incentive in either category. They were awarded \$50,000 for the management incentive, for a total incentive compensation of \$50,000.

In making this recommendation, staff utilized the methodology as identified in "Exhibit 3" of the operating agreement. This methodology of incentive compensation as outlined in the Third Amendment to the Operating Agreement is comprised of two components; the finance incentive and the management incentive. The Finance Incentive portion includes certain financial performance based measures, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations. The Management Incentive portion is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the Town's assessment of the Operator's performance and achievements during the applicable contract year. To aide the Town in its assessment of the Operator's performance and achievements, the Operator submitted to the Town an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year. Staff also met with WSAAV to share our assessment of their performance and discuss operational activities for the operating team to focus their attention on in the coming year.

Staff's philosophical approach to this performance incentive process was two-fold. One, we attempted to recognize work or accomplishments that went beyond expectations. Merely performing at expected levels does not merit a bonus; rather, the accomplishment should exceed the normal expected performance both in task and in quality. In fact, "Exhibit 3" of the operating contract states:

"While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City."

Second, this process should identify for the operating team those areas of concern that need additional attention in the coming year. Identifying areas for improvement is an important means to providing adequate feedback for future performance and rewarding exceptional future performance.

The recommended monetary amounts are identified with each category in this memorandum.

RECOMMENDATIONS:

Financial Incentive

Earned Amount \$ 112,042

The amount for this category is commensurate with the financial performance of the Airport based on the annual increase in Airport Gross Revenue (Category A) and or Other Financial Incentives (Category B). During fiscal year 2010, expected increases in collected revenue were adversely impacted due to extraordinary circumstances as outlined in the attached memorandum from Joel Jenkinson, Airport Director, dated October 30, 2009. Therefore, WSAAV did not earn a financial incentive bonus for 2009.

Management Incentive

Recommended Amount \$50,000

The recommended amount for this category relates to the Operators performance in the areas outlined below from the Annual Report and staff's own assessment. *These are areas which staff has determined to have been accomplished with a higher degree of quality and at a level that exceeds the routine daily expectations of managing an airport facility.*

- **Operations & Maintenance – (Full Scale Disaster Drill)** On June 17, 2010, airport management hosted the first-ever Full Scale Disaster Drill at Addison Airport. This drill gave the Airport, Police Department, Fire Department and the regional emergency system a chance to exercise their response to a significant aircraft accident. There were more than 20 municipalities that were involved or participated, including many regional fire departments, Careflight, FAA, and the NTSB. An exercise of this size and detail is not a common practice on GA airports nor federally required. The drill was very well coordinated and very successfully orchestrated by the staff. A job well done! **(Safety Program)** The operator began hosting airport safety meetings to promote good safety practices and address potential hazards. They invited the FAA, Tower Manager, and the flight and safety departments from our corporate partners on the field. It has been a great chance to hear first-hand what the pilots and controllers see daily as potential problems, and it has given us the opportunity to address these issues proactively. **(Snow & Ice Removal)** Airport maintenance crews performed snow and ice removal on Dec 24th and Feb 11th. On both of these dates, Addison Airport was one of only three airports that were open for business during this inclement weather. Airport crews worked around the clock to keep our customers flying! **(Sustainability)** Airport management continues to be committed and supportive of the Towns' sustainability efforts. This past year they developed a *Sustainability Plan* for the airport and are committed to protect, preserve and restore the natural environments. Crews also installed solar-powered LED taxiway edge reflectors/lights along Taxiway Romeo after its reconstruction.

- **Communications and Tenant Relations** – (**Airport Business Tenant Breakfast**) The Operator continues to be very successful in building strong tenant relationships. This has been accomplished through good communication and accessibility with the tenants. The Operator continues to successfully host tenant appreciation breakfasts twice a year where the tenants have an opportunity to visit with other tenants and ask airport management questions about what is going on at the airport. Approximately 150 airport tenants and their guests attend each of the breakfasts on a regular basis. This is an unusual practice at most general aviation airports, but has become a tradition at Addison Airport that has opened the lines of communication and trust between the tenants and the Operator. (**ABA Luncheon**) The airport also hosted an Addison Business Association luncheon with Blockbuster CEO Jim Keyes who was the featured speaker. Not a regular event at other GA airports, but once again our airport team did an exemplary job of coordinating the airport side of Kaboom Town this past July 3rd. (**Website**) This past year staff updated and gave a new look to the Addison Airport Website. The site (www.addisonairport.net) serves as the cornerstone of the airport's marketing plan. The site has new updated blog features with industry-related concerns and related topics that provide dialog capabilities with users. The new Radio Addison feature has audio interviews with airport tenants, highlighting accomplishments, news, or industry updates.

- **Community Service** – Locally, the management team is very active in community service and maintains memberships in local organizations such as the Addison Midday Rotary, the Metrocrest Chamber, the North Texas Commission, and the Addison Business Association. Additionally, the management team is very involved with state and national aviation affiliations. The management team not only belongs and attends their conferences, but hold leadership roles in those organizations and actively promote Addison Airport and the Town of Addison. (**Airport Volunteer Day at Anne Frank Elementary**) Airport staff recognizes the importance of being a good neighbor, the airport staff reached out to one of our neighbors to provide volunteer services. Airport Staff who volunteered at Anne Frank Elementary School were assigned to the library, where staff members cleaned, organized books, and sorted shelves. The airport team has made this an annual tradition.

- **Property Management** – Staff continues to express a high satisfaction with the daily operations, and the level of customer service that is provided by the Operator with respect to property management. This excellent level of customer service continues to be the way the Operator performs property management today. The Real Estate team is to be commended for their extensive hard work over the past year with the completion of several real estate development projects. Additionally it should be noted that Addison Airport is experiencing the most development/ redevelopment that the airport has seen in many years. The following are few of the development projects that were completed this past year. **PlaneSmart! Aviation** is a growing aircraft management and fractional ownership service provider that has been a tenant at Addison Airport since 2005. In August 2009, it acquired the ground lease interests at 15841 Addison Road and invested considerable capital in this property. Work progressed nicely throughout the fiscal year to turn a highly visible, but worn and obsolete building into the state-of-the-art operation it has become today. PlaneSmart!'s Grand Opening was held May 15, 2010. **ExecHangar ADS, LC** developed a full-service corporate/executive hangar co-operative facility, which includes fueling operations. We anticipate over \$150,000 in additional rental and fuel flowage fees annually from this \$1.8 million development. This is a "one-of-a-kind" development at Addison Airport and it has created quite a lot of "buzz" in the industry. The Grand Opening celebration was held on October 15, at the newly completed facility. The President of ExecHangar and developer of this project, reports that reservations for Phase 1 of the development are now full. We look forward to being contacted by ExecHangar soon to discuss Phase 2. **American Flyers** has successfully operated its flying school at Addison Airport for over 20 years. In September 2009, it acquired the ground lease interests at 4650 Airport Parkway and invested approximately \$300,000 in extensive renovations to the hangar and office to expand its international flight school and to relocate both its corporate headquarters and national aircraft maintenance operations to Addison (from Chicago, IL and Santa Monica, CA, respectively). In October 2009, American Flyers executed its Non-Public Fueling License Agreement to accommodate their expanding operations and in November the tenant commenced

Property Management (Con't)

operating as a non-public fueler. **J-W Operating Company** recently completed construction of its new \$7.6 million corporate headquarters at 4301 Wiley Post. This magnificent building is visible from Addison Road across the southern portion of the Airport. J-W Operating holds an airport access permit for this location as they have a fleet of six turbo-prop aircraft actively used in support of their business operations. **(Ground Lease Administration)** Although the real estate teams' day to day ground lease administration function is a routine part of the job, there were three cases this past year where the Operator went above and beyond to bring successful conclusion to the issues in favor of the airport. **1)** The Operator worked to successfully resolve a private utility matter regarding the duty to repair and maintain shared utilities that exclusively serves two adjacent ground leased properties. **2)** With the support of the City Attorney, defended the Town's interest in the bankruptcy of a business tenant at the airport and succeeded in insisting that the court have all of the operator's inoperable aircraft auctioned and removed from the airport. All aircraft were sold and are in the process of being disassembled and removed from the airport by the successful bidders. They also succeeded in defending the Town's interest so there was no loss of revenue to the airport due to the bankruptcy. **3)** Recommended and implemented a strategy approved by the Town prior to the bankruptcy of another airport tenant **Great Escape Aviation, Inc.**, that involved the termination of a ground lease and taking possession of the property. They continue to defend the Town's best interests throughout the bankruptcy proceedings to seek an amicable resolution regarding Great Escape's remaining leasehold interest and obligations to the Town.

This incentive compensation is for the 2010 fiscal year and a requirement of the previous management agreement. Beginning with this fiscal year and the new airport management agreements, the airport management team will continue to have the ability each year to earn a financial incentive under the new contracts. The management incentive is no longer a part of the operating agreements.

Staff wishes to acknowledge and complement both the URS and SAMI management teams for their professionalism, overall efforts and spirit of cooperation that resulted in bringing forward two successful new management contracts for the management of Addison Airport. We have an excellent team in place managing our airport, and it is truly a pleasure to work with them.

Attachments: 2010 Annual Report – Addison Airport
Joel Jenkinson – WSAAV Financial Incentive Compensation Memorandum
Third Amendment to the Operating Agreement
“Exhibit 3” from Operating Agreement



To: Mark Acevedo

From: Joel Jenkinson, Airport Director

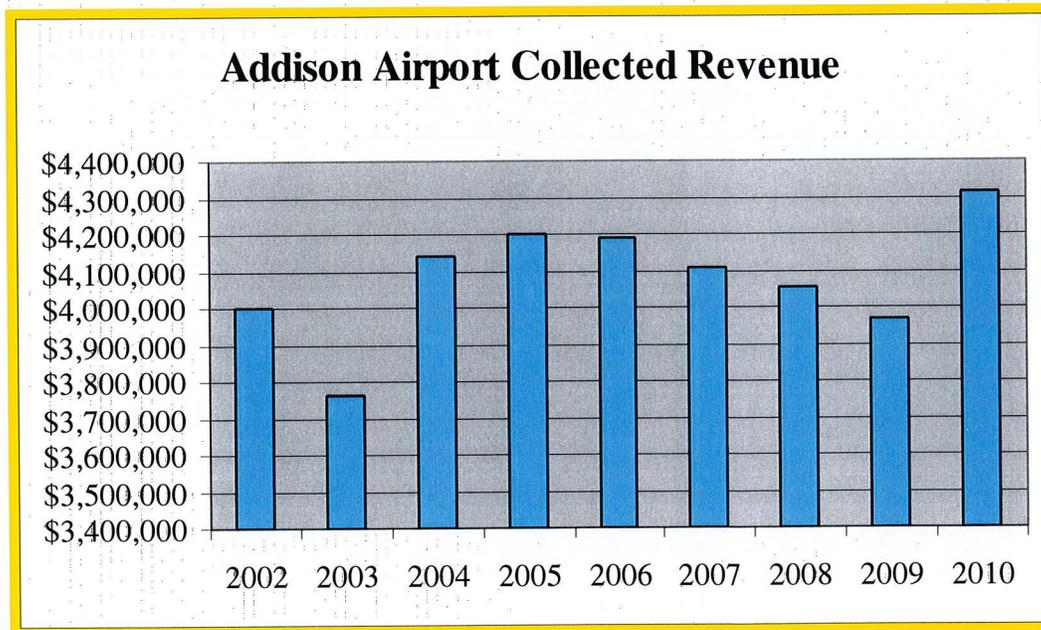
A handwritten signature in black ink that reads "Joel Jenkinson".

Date: October 29, 2010

CC: WSAAV Board of Directors
Bill Dyer, Real Estate Manager

Re: WSAAV Financial Incentive Compensation Award - Fiscal Year 2010

Please find attached Washington Staubach Addison Airport Venture's (WSAAV) calculation of its financial incentive award for Fiscal Year 2009-2010.



Pursuant to the Operating Agreement, WSAAV's financial incentive is based upon actual collections (as opposed to revenue billed) for the reported period compared to the preceding

year. We are pleased to report that collected revenue for fiscal year 2010 has increased over the preceding year for the first time since 2005. This increase is largely attributed to the Airport finally realizing the economic benefits from much of the redevelopment that has taken place over the past several years together with improved fuel sales and Eddins/RSP finally paying their access fees owed from prior years.

As a consequence of these encouraging results, WSAAV is pleased to report that it qualifies for a financial incentive award for fiscal year ending September 2010.

As you are aware, the WSAAV Operating Agreement expired September 30, 2010 so we are pleased that both the Town and joint venture concluded its relationship on such a strong and positive note. We look forward to even greater successes under our new management structure.

Should you have any questions or require additional information, please let me know.

**Calculation of WSAAV Fiscal Year 2010
Financial Incentive Compensation**
(In accordance with the 3rd Amendment to the Operating Agreement)

Section 6.C of the Agreement for the Operation and Management of Addison Airport, as amended, (“Operating Agreement”) outlines the parameters of incentive compensation, as a supplement to the management fee, to be paid to the Airport Operator for achieving desired financial, operational and management objectives.

Exhibit 3 to the Operating Agreement (see 3rd Amendment) defines the purpose of the Financial Incentive is to encourage the creative and aggressive marketing and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with its financial performance at the Airport based on the increase in Airport Gross Revenue. Financial performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives.

A – Gross Revenue Increase

When the annual Gross Revenue for the Contract Year exceeds the actual Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with an increasingly higher percentage of the revenue increase as given in Table 1 below.

Table 1
Finance Incentive Bonus – Gross Revenue Increase

Growth Percentage from Prior Year	Finance Incentive Bonus %
< 0	0%
> 0% and <=3.5%	0%
3.5% and <=5.0%	20%
5.0% and <=6.5%	24%
6.5% and <=8.0%	28%
8.0% and above	32%

The Yearly Calculation of Fees for **Fiscal Year Ending September 30, 2010** (attached hereto as Exhibit “A”) shows revenue collected for the period a total of **\$4,316,073**. The Yearly Calculation of Fees for **Fiscal Year Ending 2009** (attached hereto as Exhibit “B”) shows revenue collected for the period a total of **\$3,965,943**.

The percentage of Gross Revenue Growth for Fiscal Year 2010 is 8.83%. Based upon the above table, WSAAV qualifies for a financial incentive based upon the Gross Revenue Increase as defined in Section 6.C (as amended) of the Operating Agreement for Fiscal Year 2010.

Table 2
Calculation of Gross Revenue Increase Incentive

	FY 2009	FY 2010
Adjusted Airport Revenues	\$3,965,943	\$4,316,073
% Increase Over Prior Year		8.83%
Change In Revenue From Prior Year		\$350,130
Eligible Bonus Percentage		32%
Financial Growth Incentive Bonus		\$112,042

B – Other Financial Incentives

Through the Fence Operations – The Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City-approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport (“TTF Incentive”). The amount of the TTF Incentive shall be equal to 25% of any portion that is in excess of the original fee, when a TTF agreement is renegotiated or modified (for the first Annual Permit Fee of the modified agreement only) and 25% of the first year Annual Permit Fee for each new Addison Airport Access Permit Agreement (“Access Agreement”). This TTF Incentive award shall be deemed earned, due and payable in a lump sum to Operator immediately upon the City’s acceptance of the Annual Permit Fee related to the increase or new Access Agreement.

No new permits were granted by the Town during Fiscal Year 2010, therefore no financial incentives were calculated under this heading.

Addison Airport
YTD Calculation of Fees
9/30/2010 YTD

EXHIBIT A

Gross Billed Revenues:				
	Ground Lease	1,999,742.57	1,999,742.57	0.00
	T Hangar	565,947.29	565,947.29	0.00
	Jet Hangar	469,308.26	469,308.26	0.00
	Patio Hangar	127,987.34	127,987.34	0.00
	Tie Down	6,000.00	6,000.00	0.00
	Access Fees	59,340.46	59,340.46	0.00
	Fuel Farm	132,146.13	132,146.13	0.00
	Fuel Flowage Fees	720,825.39	720,825.39	0.00
	Customs Fees	38,139.81	38,139.81	0.00
	USDA Fees	8,424.00	8,424.00	0.00
	Miscellaneous	10,605.58	10,605.58	0.00
Total Billed Revenues:		<u>4,138,466.83</u>	4,138,466.83	0.00
Adjustment for Collected:				
	1300 SEPT 30 2009 Balance w/o mgd	163,739.98		
	1300 SEPT 30 2010 Balance w/o mgd	<u>55,665.19</u>		
	Net Change:	<u>108,074.79</u>	108,074.79	0.00
Gross Billed Managed Hangar Revenues:		232,509.91	232,509.91	0.00
Adjustment for Collected:				
	1300 SEPT 30 2009 Balance	(5,085.00)		
	1300 SEPT 30 Balance	<u>(4,345.00)</u>		
	Net Change:	<u>(740.00)</u>	(740.00)	0.00
	Subtotal:	<u>231,769.91</u>		
	30% Retainage:	<u>69,530.97</u>	69,530.97	0.00
Less Bank Interest Earned		0.00	0.00	0.00
Total Collected Revenues:		<u>4,316,072.59</u>	969,476.59	3,346,596.00
			18.00%	21.514% <small>EFFECTIVE RATE</small>
Less W/S Management Fee		894,505.79	174,505.79	720,000.00
Less Operations & Maintenance Expenses:		1,078,829.50		\$1,078,829.50
				\$0.00
Net Addison Airport Revenues:			<u>2,342,737.30</u>	
Security Deposits to be Forwarded:				
Adjustment for Collected:				
	2010 2020 SEPT 30 2009 Balance	(163,819.13)		
	2010 2020 SEPT 30 2010 Balance	<u>(161,135.55)</u>		
	Net Change:	<u>(2,683.58)</u>		
Total Collected for Security Deposits:			<u>(2,683.58)</u>	(2,683.58) (0.00)
Add Bank Interest Earned			0.00	
Total YTD Due to Town of Addison:				2,340,429.44
Total Previously Paid to Town of Addison:				(2,184,241.57)
Prior Year Adjustment				0.00
Total Due to Town of Addison:				<u>156,187.87</u>

Addison Airport
YEARLY Calculation of Fees
9/30/2009 YTD

EXHIBIT B

Gross Billed Revenues:

Ground Lease	1,828,312.79	1,828,312.79		0.00
T Hangar	585,484.31	585,484.31		0.00
Jet Hangar	451,736.55	451,736.55		0.00
Patio Hangar	121,822.79	121,822.79		0.00
Tie Down	29,975.00	29,975.00		0.00
Access Fees	59,771.02	59,771.02		0.00
Fuel Farm	135,637.30	135,637.30		0.00
Fuel Flowage Fees	627,558.72	627,558.72		0.00
Customs Fees	31,521.21	31,521.21		0.00
USDA Fees	9,360.00	9,360.00		0.00
Miscellaneous	16,156.73	16,156.73		0.00
	3,897,336.42	3,897,336.42		0.00

Total Billed Revenues:

Adjustment for Collected:

	1300	SEPT 30 2008 Balance w/o mgd	163,896.84		
	1300	SEPT 30 2009 Balance w/o mgd	163,739.98		
		Net Change:	156.86	156.86	0.00

Gross Billed Managed Hangar Revenues:

Adjustment for Collected:

	1300	SEPT 30 2008 Balance	(7,310.00)		
	1300	SEPT 30 2009 Balance	(5,085.00)		
		Net Change:	(2,225.00)	(2,225.00)	0.00
		Subtotal:	231,255.65		
		30% Retainage:	69,376.70	69,376.70	0.00

Less Bank Interest Earned (926.96) (926.96) 0.00

Total Collected Revenues:

3,965,943.02 619,347.01 3,346,596.00
0.18 0.22 EFFECTIVE RATE

Less W/S Management Fee

831,482.46 111,482.46 720,000.05

Less Operations & Maintenance Expenses:

1,284,772.70 \$1,284,772.70 \$0.00

Net Addison Airport Revenues:

1,849,687.85

Security Deposits to be Forwarded:

Adjustment for Collected:

	2009	2020	Sept 30 2008 Balance	(164,808.73)		
		2020	Sept 30 2009 Balance	(163,819.13)		
			Net Change:	(989.60)	(989.60)	0.00

Total Collected for Security Deposits:

(989.60)

Add Bank Interest Earned

926.96

Total YTD Due to Town of Addison:

1,849,625.21
(1,735,085.56)

Total Previously Paid to Town of Addison:

or Year Adjustment

Total Due to Town of Addison:

114,539.65

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**THIRD AMENDMENT TO AGREEMENT
FOR THE OPERATION AND MANAGEMENT OF ADDISON AIRPORT**

THIS THIRD AMENDMENT to Agreement for the Operation and Management of Addison Airport (“Third Amendment”) between the Town of Addison, Texas (“City”) and Washington Staubach Addison Airport Venture (“Operator”) is made and entered into this the ____ day of _____, 2004.

Recitals:

1. The City is the owner of Addison Airport (the “Airport”). On or about August 8, 2000 the City and Operator, together with the entities which formed the Operator as a joint venture, Raytheon Infrastructure, Inc. (a wholly owned subsidiary of Washington Group International, Inc.) and Staubach Airport Management, Inc. (a subsidiary of The Staubach Company), entered into an agreement for the operation and management of the Airport entitled “Agreement for the Operation and Management of Addison Airport” which was amended by that (a) First Amendment to Agreement for the Operation and Management of Addison Airport made and entered into on September 27, 2000, and by that (b) Second Amendment to Agreement for the Operation and Management of Addison Airport (the “Second Amendment”) made and entered into on or about February 2002 (the said Agreement for the Operation and Management of Addison Airport, as amended, being referred to herein as the “Airport Management Agreement” or “Agreement”). The Airport Management Agreement has an effective or commencement date of January 1, 2001 (“Commencement Date”).

2. The Airport Management Agreement provides in Section 4.B.2(c) thereof that the Operator shall at all times provide security for the Airport in cooperation with the City’s Police and Fire Departments. The City acting through its Police and Fire Departments has provided public safety for the Airport at all times since the Commencement Date of the Agreement and acknowledges that City has not looked to the Operator to provide the same at the Airport since the Commencement Date.

3. The Airport Management Agreement provides in Section 6.C. and in Exhibit 3 thereof, as amended by the Second Amendment, that the Operator has the ability to earn incentive compensation as described therein.

4. The City and the Operator desire to amend the Airport Management Agreement to reflect accurately the operations of the City and Operator in regards to the above referenced items and to clarify and amend other provisions of the Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Washington Staubach Addison Airport Venture do hereby 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 of this Third Amendment for all purposes.

Section 2. Amendments. The Airport Management Agreement is amended as follows:

A. Section 4.B.2(b) is amended so that the last sentence of such Section shall hereafter read in its entirety as follows:

“Operator shall perform background checks or require background checks to be performed on personnel hired to the positions of the Airport Director and Assistant Airport Director, and the City shall have the right to review such background checks.”

B. Section 4.B.2(c) is amended so that it shall hereafter read in its entirety as follows:

“(c) Public Safety. The City shall provide Airport public safety at all times, and shall utilize the City’s Police Department and Fire Department in providing such public safety. The City’s public safety personnel shall patrol the Airport at times as determined by the City. Any unauthorized use of structures, equipment, or property, or unauthorized entry upon Airport premises, or unlawful activity at the Airport, shall be promptly reported by the Operator to the City police or such other authority designated in writing by the City. The City will notify the Operator of any specific public safety issues or concerns of which the City has actual knowledge which may be necessary for the performance of its duties as Operator. ”

C. Section 4.E.2. is amended so that it shall hereafter read in its entirety as follows:

“2. Capital Improvement Plan. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City proposed amendments to the 10-year Capital Improvement Plan, a component of the Airport Master Plan. The proposed amendments shall be consistent with the continuing development of the Airport in accordance with federal and state funding.”

D. Section 4.E.3. is amended so that it shall hereafter read in its entirety as follows:

“3. Operating Budget. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City, for the City’s review and consideration of approval, an Operating Budget (“Operating Budget”) for the Airport for the Fiscal Year following the date of the submission. The Operating Budget shall include, but not be limited to: (i) projected costs necessary for the upkeep of the Airport, to maintain safety standards and to keep the airport in compliance with applicable federal, state, and local laws and regulations for the Fiscal Year following submission; and (ii) a schedule of proposed fees.

Operator shall also provide to the City, upon request: (i) a schedule of all leases, concessions, contracts and agreements to be negotiated or renegotiated; (ii) recommendations, if any, for non-capital improvements of Airport facilities and acquisition of equipment; (iii) a three (3) year projection of anticipated revenues and expenses; and (iv) a schedule of proposed staffing levels of full, part-time, and seasonal employees. Appropriate modification of the Airport Operating Budget shall be made as required to conform to the Approved Operating Budget (as defined in Section 4.G.2.) as adopted or amended. Operator shall manage and operate the Airport in accordance with the Operating Budget approved by the City.

- E. Section 4.E.4. is amended so that it shall hereafter read in its entirety as follows:
- “4. Lease Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport lease renewal and extension plan for the Fiscal Year following the date of the submission.”
- F. Section 4.E.5. is amended so that it shall hereafter read in its entirety as follows:
- “5. Marketing Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport marketing plan (“Marketing Plan”) for the Fiscal Year following the date of the submission. Operator shall market and promote the Airport in accordance with the Marketing Plan approved by the City.”
- G. Section 4.E.6. is amended so that it shall hereafter read in its entirety as follows:
- “6. Airport Emergency Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, recommend to the City for its review and consideration of approval, amendments to the City’s Emergency Preparedness Plan, if any (the “City’s Emergency Preparedness Plan”). Additionally, Operator shall prepare and implement its own emergency plan for the Airport which shall be submitted to the City for its review and consideration at the time the Operating Budget is submitted each year (the ‘Operator’s Emergency Plan’).”
- H. Section 4.E.8. is amended so that it shall hereafter read in its entirety as follows:
- “8. Property Development and Management Plan. Operator shall, together with the City, coordinate the development and preparation (and updating, as may be deemed necessary by the City) of a comprehensive plan which addresses the future development and redevelopment of the Airport, taking proper consideration for the vicinity surrounding the Airport (including, without limitation, commercial development along Addison Road, City facilities and property adjacent to the Airport, the Addison Circle area, and the area adjacent to and west of the Airport), for a period of 10 years (the “Property Development and Management Plan”). The Property Development and Management Plan shall be consistent with the Airport Master Plan and FAA and TxDOT rules and regulations, and shall be submitted to the City in connection with its budget process each year during the term of this Agreement, for its review and consideration of approval.”
- I. The Agreement is hereby amended such that all references in the Agreement to the delivery of budgets and/or plans by the Operator in connection with the City budget process shall be deemed to be due following the written notification of the budget delivery deadline by the City each Contract Year.
- J. Section 4.G.1(b) is amended so that it shall hereafter read in its entirety as follows:
- “(b) Contract Years. In connection with the City budget process each year during the term of this Agreement, Operator shall submit to the City a proposed operating budget for the

operation, repair, maintenance, and development of the Airport for the Fiscal Year following the date of the submittal. The said budgets shall be submitted in conformance with the City Charter and any applicable rules, regulations, policies, or practices of the City. In the proposed operating budget, Operator shall show all Operating Costs (including, without limitation, all such costs which, in Operators' judgment, are (i) mandated as a result of safety considerations, and (2) are mandated by applicable federal certifications, standards and grant agreement requirements), and may, but shall not be required, to show Real Estate Costs, Marketing Costs, or General Administrative Costs."

K. Section 4.K.1.b. is amended so that it shall hereafter read in its entirety as follows:

"(b) Leasing Activity. A leasing activity report including the following:

- (i) Leasing activity (including new leases, lease renewals, lease extensions, new prospects, vacated tenants, and lease expirations);
- (ii) Tenant retention;
- (iii) Information regarding the use of the Airport by aviation trade groups; and
- (iv) Such other information as the City (by and through the City Manager) may reasonably request."

L. Section 4.K.1.c. is amended so that it shall hereafter read in its entirety as follows:

"(c) Rent Roll. A report showing with respect to each lease or through-the-fence agreement the name of each tenant or user, as the case may be, the space occupied, the rent (or other fee) payable, the date rent (or other fee) is paid through, the commencement date, the term, the termination date, the amount of security deposit held, and any other information reasonably requested by the City (including a statement identifying changes from previous rent roll if requested by the City and not appearing in the activity report). Commencing August, 2004, the rent roll report shall not be required to be submitted monthly by the Operator, but shall be delivered within ten (10) days following the City's request for same."

M. Section 4.P.3 is amended so that it shall hereafter read in its entirety as follows:

3. Emergency Preparedness. Operator shall have available personnel to respond to emergencies, such as fires, aircraft incidents, or disasters. Operator shall implement the Operator's Emergency Plan and the City's Emergency Preparedness Plan as may be prudent and necessary and respond to all emergencies at the Airport in a manner consistent with such Plans.

N. Section 5.C.4. is amended to add the following to the end of such section:

"Notwithstanding the foregoing, commencing August 1, 2004, the City shall have no obligation to purchase or replace computer equipment for use by the Operator."

O. Section 6.B.1 is amended so that it shall hereafter read in its entirety as follows:

"1. In addition to the payment for Operating Costs, Operator shall retain a management fee ("Management Fee") in an amount equal to 21.5144% of Gross Revenue equal to or less than \$3,346,596 each Contract Year plus 18% of all Gross Revenue in excess of

\$3,346,596 each Contract Year, which Fee is intended to compensate Operator for, among other things, Real Estate Costs, Marketing Costs, and General Administrative Costs incurred by Operator in the management, operation, and development of the Airport. In the event the City has not made sufficient funds available to allow Operator to retain the Management Fee, the City shall pay same to the Operator no later than the 15th day of the applicable month.

Example:

Fiscal Year	Gross Revenue	Management Fee
2002	\$4,002,268	$(3,346,596 \times .21544) + (655,672 \times .18) = 720,000.05 + 118,020.96 = 838,021.01$
2003	\$3,761,868	$(3,346,596 \times .21544) + (415,272 \times .18) = 720,000.05 + 74,748.96 = 794,749.01$

In addition, if a delay in performance is caused by reasons described in Section 15. Force Majeure, and such delay causes the anticipated Gross Revenues collected in the applicable fiscal year to be less than \$2,000,000.00, the Management Fee shall be suspended and deferred until such time that such anticipated Gross Revenues equal or exceed \$2,000,000.00.

P. Section 6.C. is amended so that it shall hereafter read in its entirety as follows:

“C. Incentive Compensation. It is contemplated by the City and Operator that the Operator will be awarded incentive compensation (“Incentive Compensation”) each year during the Term of this Agreement. The amount of potential Incentive Compensation that may be earned shall be established following the end of each Contract Year. Incentive Compensation provided for under this Amendment is the total monetary consideration paid by the City and awarded to Operator for achieving (a) certain financial accomplishments specifically set forth in Exhibit 3, attached hereto and fully incorporated herein, and (b) non-financial performance incentives. Non-financial performance incentives (the “Management Incentive”) is the monetary consideration which may be awarded to Operator, as a percentage of Gross Revenue, based upon the City’s assessment of the Operator’s overall performance and achievements during the applicable Contract Year. To aide the City in this evaluation, Operator shall submit to the City on or before October 31 of each year an annual report (the “Annual Management Report”), which is intended to be limited in scope but sufficient enough to summarize the Operator’s accomplishments and performance over the applicable Contract Year. The City shall timely evaluate the Annual Management Report and determine, based on its review of the Operator’s performance, the appropriate Management Incentive to be awarded to the Operator for such Contract Year. The amount of the Management Incentive determined by the City to be payable shall be paid to Operator within (10) days following such determination, but in no event later than December 15 following the applicable Contract Year.”

Q. Section 14 is amended to change the notice address previously reflected as Raytheon Infrastructure, Inc. as follows:

“Washington Group International, Inc.
510 Carnegie Center
Princeton, NJ 08540
Attn: President
Telecopy: 609-720-2050”

R. Exhibit 3 to the Agreement, as previously amended and modified, shall be amended to read in its entirety as attached hereto and Attachment 1 and Attachment 2 to the Second Amendment to the Agreement are hereby deleted.

Section 3. No Other Amendment. Except as set forth in Section 2 above, nothing in this Third Amendment is intended to nor shall be construed to modify, alter, or change the Airport Management Agreement, and all other terms, conditions and obligations of the Airport Management Agreement shall remain unchanged and in full force and effect.

Section 4. No Benefit to Third Parties. The provisions of this Third Amendment are solely for the benefit of the City and Operator and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 5. Authority to Execute; Effective Date; Counterparts. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Third 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. This Third Amendment shall be effective as of the date first set forth above. This Third Amendment may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by a party hereto shall be treated as an original signature for purposes of this Third Amendment.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

TOWN OF ADDISON, TEXAS	WASHINGTON STAUBACH ADDISON AIRPORT VENTURE
By: _____ Ron Whitehead, City Manager	By: WASHINGTON GROUP INTERNATIONAL, INC.
ATTEST:	By: _____ Kurt Goddard, Vice President
By: _____ Carmen Moran, City Secretary	By: STAUBACH AIRPORT MANAGEMENT, INC.
	By: _____ Larry B. Kimbler, President

EXHIBIT 3 - INCENTIVE COMPENSATION AGREEMENT FOR THE OPERATION AND MANAGEMENT OF ADDISON AIRPORT

I. OVERVIEW:

Section 6.C. of the Agreement for the Operation and Management of Addison Airport, as amended or modified (the "Airport Management Agreement" or "Agreement") provides that it is anticipated that the Operator will be awarded Incentive Compensation each year during the Term of this Agreement. Incentive Compensation is the total monetary consideration paid by the City and awarded to Operator at the end of each Contract Year for achieving (a) certain financial accomplishments specifically set forth below, and (b) non—financial performance incentives as described in Section 6.C. of the Agreement (as Section 6.C. is amended by the Third Amendment to Agreement for the Operation and Management of Addison Airport). This Exhibit 3 establishes guidelines for implementing and administering the financial performance incentives ("the Financial Incentive") portion of Incentive Compensation as provided for in Section 6.C. of the Airport Management Agreement.

While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City.

II. DEFINITIONS (for Financial Performance Incentive Compensation Issues)

Base Management Fee – The Base Management Fee is an amount equal to 10% of the actual Gross Revenue received in a contract year.

Gross Revenue – Gross Revenue is as defined in Section 2 of the Agreement.

Prior Year Gross Revenue – The Prior Year Gross Revenue shall mean the amount of Gross Revenue for the Fiscal Year immediately preceding the then applicable Contract Year under the Airport Management Agreement.

Illustration / Example Tables Used in Exhibit 3 – The illustrative tables used in this Exhibit are intended to serve as examples only. The initial and projected financial calculations are illustrative of the manner in which the Financial Incentive provision is to be applied, but are not intended to be indicative of the actual amount of Financial Incentive for any specific year. Amounts shown are hypothetical projections.

FINANCIAL INCENTIVE

The purpose of the Financial Incentive is to encourage the creative and aggressive marketing and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase, and b) Other Financial Incentives.

A. Gross Revenue Increase

When the Gross Revenue for the then applicable Contract Year (the "Current Year Gross Revenue") exceeds the Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with a percentage of such excess in accordance with Table 1 below. Table 2 illustrates an example of the calculation of the Management Fee (as defined in Section 6.B.1. of the Airport Management Agreement) and the Gross Revenue Increase portion of the Finance Incentive over a five-year period. In actuality, the incentive may be lower or higher than illustrated in Table 2. Table 2 merely serves as an illustration of the calculation of the Gross Revenue Increase portion of the Finance Incentive and how it will be determined.

Table 1
Financial Incentive -
Gross Revenue Increase

Growth Percentage between Current Year Gross Revenue and Prior Year Gross Revenue	Financial Incentive Bonus (%of the difference (excess) between Current Year Gross Revenue and Prior Year Gross Revenue)
<0	0%
>0% and <=3.5%	0%
>3.5% and <= 5%	20%
>5% and <=6.5%	24%
>6.5% and <=8%	28%
> 8%	32%

Table 2
Management Fee & Financial Incentive Calculation
Based On Change of Gross Revenue

	2002	2003	2004	2005	2006
Adjusted Airport Revenues	4,002,268	3,761,868	4,007,000	4,159,266	4,379,707
% Increase Over Prior Year	NA	0.0%	6.52%	3.80%	5.03%
Change in Revenue From Prior Year	NA	-0-	245,132	152,266	220,441
Eligible Incentive % (from Table 1)	NA	0.0%	23.0%	20.0%	24.0%
Gross Revenue Increase portion of Financial Incentive	-0-	-0-	68,637	30,543	52,906
Mgmt. Fee (21.544% of Gross Revenue equal to or less than \$3,346,596)	720,000	720,000	720,000	720,000	720,000
Mgmt. Fee (18% of Gross Revenue in excess of \$3,346,596)	118,021	74,749	118,872	146,280	185,960
Total Management Fee	838,021	794,749	838,872	866,280	905,960
Total – Gross Revenue Increase portion of Financial Incentive + Total Management Fee	838,021	794,749	907,509	896,733	958,866

B – Other Financial Incentives

This category is reserved for other non-discretionary annual goals or objectives, which may arise as a result of new or revised City priorities and whereby the Operator shall be eligible for certain one-time incentives that benefit either the City or the Airport on a recurring basis. Each goal or objective is to be clearly stated and the means by which the non-discretionary financial incentive is to be determined. An example of the award calculation should be given where possible.

Off-Airport Access Permit Agreements – The Operator shall receive an incentive for securing new off-Airport access agreements with businesses wanting access to the Airport. The incentive amount is equal to 25% of the first year annual permit fee set forth in each new agreement permitting off-Airport access to the Airport (“Access Agreement”). This non-discretionary incentive award shall be considered earned and payable to Operator immediately upon the City’s execution of a new Access Agreement and actual receipt and acceptance of the first year annual permit fee from the applicant. A new Access Agreement is defined herein to be any Access Agreement entered into, assigned, transferred or otherwise conveyed and consented to by the City. This incentive award does not apply or extend to subsequent annual permit fees earned by the City for any one Access Agreement, or to any adjustment made to the annual permit fee as provided for in the Access Agreement. Table 3 below provides an example of the calculation of the incentive amount for a new Access Agreement.

Table 3
Incentive Compensation
Financial - Other Revenue

	2002	2003	2004	2005	2006
Through the Fence					
# of New Access Agreement	2	1	1	0	3
1 st Yr. Annual Permit Fee Total	\$5,000	\$3,500	\$1,300	\$0	\$7,400
Incentive - 25%	\$1,250	\$875	\$325	\$0	\$1,850

Council Agenda Item: #R7

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 14 (Aviation), Article III (Municipal Airport), Division 1 (Generally) of the Code of Ordinances adopting and amending rules and regulations relating to the use and operation of Addison Airport, including the use and operation of aircraft and vehicles, and hangars owned and/or operated by the Town.

FINANCIAL IMPACT:

N/A

BACKGROUND:

The Airport has developed and published Rules and Regulations in accordance with FAA guidelines and recommendations. The current version of the Rules and Regulations (as well as Minimum Standards and Requirements for Commercial Aeronautical Service Providers) was adopted March 1, 2004.

In addition to the Airport Rules and Regulations, a Town of Addison municipal ordinance (Part II, Chapter 14, and Article III) regulates certain airport activities. However, many provisions in the Rules and Regulations are not incorporated in the municipal ordinance and therefore do not have the force of law and cannot be effectively enforced. In particular, safety regulations relating to pedestrians and the operation of ground vehicles on the airport are not included in the ordinance and cannot be effectively enforced by the Addison Police Department.

In recent years, NTSB and FAA have placed a strong emphasis on runway safety with a particular focus on preventing “runway incursions”. A “runway incursion” (according to FAA and ICAO – International Civil Aviation Organization – standards) is any improper or unauthorized intrusion on the runway environment by an aircraft, ground vehicle, or pedestrian regardless of whether that intrusion creates a conflict with an aircraft. Runway incursions are classified by both type and severity. There are three types of incursions: operational error (OE) in which an air traffic controller is at fault; pilot deviation (PD) in which the pilot is at fault; and

vehicle / pedestrian deviation (V/PD) in which a ground vehicle or a pedestrian is at fault. In general, airports have the responsibility for reducing / preventing V/PDs. Incursions are ranked by severity, from A (most serious, in which a collision was narrowly avoided) to D (least serious, with no immediate safety consequences).

Airport staff has reviewed and revised the Rules and Regulations, and the city attorney has produced an ordinance incorporating the airport Rules and Regulations. It should be noted that a similar approach at Fort Worth Meacham airport was successful in reducing their incursion problem.

RECOMMENDATION:

Staff and Airport Management recommend approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community, Develop and utilize the Addison Airport as an engine to drive economic growth in the community

ATTACHMENTS:

Description:

- [Ordinance Regarding Airport Rules & Regulations](#)
- [Airport Rules & Regulations](#)

Type:

- Ordinance
- Cover Memo

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING DIVISION 1 (GENERALLY) OF CHAPTER 14 (AVIATION), ARTICLE III (MUNICIPAL AIRPORT) BY ADOPTING CERTAIN PROVISIONS, RULES AND REGULATIONS RELATING TO THE USE AND OPERATION OF AIRCRAFT AND VEHICLES ON THE ADDISON AIRPORT; PROVIDING DEFINITIONS; PROVIDING CERTAIN GENERAL REGULATION REGARDING ADDISON AIRPORT; PROVIDING REGULATIONS RELATING TO AIRCRAFT GROUND OPERATIONS; PROVIDING REGULATIONS RELATING TO VEHICLES AND OTHER MODES OF TRANSPORTATION ON ADDISON AIRPORT; PROVIDING REGULATIONS RELATING TO AIRPORT HANGARS; PROVIDING REGULATIONS RELATING TO AIRCRAFT WASHING, STORM WATER POLLUTION PREVENTION, THE AIRPORT ACCESS ROAD, SMOKING AT THE AIRPORT, ACCIDENT REPORTS, AND AIRCRAFT INTERFERENCE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY, IN ACCORDANCE WITH SECTION 1-7 OF THE CODE OF ORDINANCES, IN AN AMOUNT NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), EXCEPT THAT THE PENALTY FOR A VIOLATION OF A PROVISION HEREOF REGARDING FIRE SAFETY, ZONING, OR PUBLIC HEALTH OR SANITATION SHALL NOT EXCEED THE SUM OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00), BUT IN ANY EVENT THE PENALTY SHALL NOT BE LESS THAN OR EXCEED AN AMOUNT AS MAY BE PRESCRIBED BY STATE LAW FOR A VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) desires to amend the Code of Ordinances of the City as set forth herein to adopt certain rules and regulations pertaining to Addison Airport, including the use and operation of aircraft and vehicles therein, and the City Council does hereby find that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending Division 1 (Generally) of Chapter 14 (Aviation), Article III (Municipal Airport) of the Code of Ordinances of the City (the “Code of Ordinances”) as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the Code of Ordinances

are not amended hereby. For purposes of the said amendments as set forth in the attached Exhibit A, additions are shown by underlining, and deletions are shown by ~~strike-through~~.

Section 3. 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 City, 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 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount in accordance with and as provided in Section 1-7 of the Code of Ordinances (that is, in an amount, not to exceed \$500.00, except that a fine not to exceed \$2,000.00 shall be imposed upon a person convicted of a violation of this Ordinance if the violation governs fire safety, zoning or public health or sanitation, but any penalty imposed for a violation of this Ordinance shall not exceed or be less than the penalty as may be prescribed by state law), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 14th day of December, 2010.

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

OFFICE OF THE CITY SECRETARY
Page 2 of 3

ORDINANCE NO. _____

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Exhibit A
to Ordinance No. _____

The Code of Ordinances of the Town of Addison, Texas is amended by amending Division 1 (Generally) of Chapter 14 (Aviation), Article III (Municipal Airport) of the Code of Ordinance of the City as set forth herein (additions are shown by underlining, and deletions are shown by ~~strike-through~~).

DIVISION 1. GENERALLY

Section 14-61A. Definitions. For purposes of this division, the words and phrases set forth below shall have the following meanings, except where the context clearly indicates a different meaning:

Abandon, except as otherwise provided in this division, means that property has been left on non-leased property at the airport without the consent of the town for a period of 48 hours or more without the owner moving or claiming it, or on leased property at the airport without the consent of the tenant.

Air traffic control tower (ATCT or tower) means the facility from which FAA authorized personnel provide instructions to aircraft and approved vehicles operating on and/or within the vicinity of the airport movement areas via two-way radio communications or light gun signals.

Air traffic controller (ATC) means FAA authorized personnel who provide instructions to aircraft and approved vehicles operating on and/or within the vicinity of the airport movement areas via two-way radio communications or light gun signals from the tower.

Aircraft means any device intended, used, or designed for flight in the air.

Aircraft maintenance means the maintenance, preventive maintenance, rebuilding, or alteration of aircraft as described in Part 43, Title 14, Code of Federal Regulations, and includes only major repairs and minor repairs as defined below:

(1) *Major repairs* means major alterations or major repairs to the airframe, powerplant, propeller, appliance, or otherwise of an aircraft as set forth or described in Appendix A, subsections (a) (major alterations) and (b) (major repairs) to Part 43, Title 14, Code of Federal Regulations.

(2) *Minor repairs* means preventive maintenance (provided it does not involve complex assembly operations) to an aircraft as set forth or described in Appendix A, subsection (c) (preventive maintenance) to Part 43, Title 14, Code of Federal Regulations; provided, however, that “replacing prefabricated fuel lines,” identified as item (22) in the said subsection (c), is not preventive maintenance (and therefore not a minor repair) but is and shall be considered a major repair.

Aircraft parking and storage areas means those hangar and apron locations of the Airport designated by the Airport Director for the parking and storage of aircraft.

Airport means the area of land owned by the Town and known as Addison Airport.

Airport Director means the duly designated person (whether designated pursuant to a contract between the Town and a third party, or otherwise) responsible for the overall operation and management of the airport, or the Airport Director's designated representative.

Airport layout plan (ALP) means the town council's most recently accepted scaled drawing of existing and proposed land and facilities necessary for the operation and development of the airport, which has been submitted to the FAA for approval or approved by the FAA.

Airport operations area (AOA) or airside means the portion of the Airport, paved and unpaved, specifically reserved for the use of the actual operators of licensed aircraft, the aircraft crews, passengers of the aircraft, employees of the Town and of any entity or person that operates and manages the Airport for the Town, and such other persons as may be authorized to enter thereon by reason of their official duties in connection with the maintenance, inspection and operation of the aircraft and Airport. Generally the Airport Operations Area is that portion of the Airport which lies inside the Airport perimeter security fence giving direct access to any aircraft and its movement area.

Apron means a paved area that is located adjacent to an aircraft hangar door and allows the maneuvering of aircraft to and from the hangar it serves.

Authorized person means a person that has successfully completed a Ground Vehicle Training Program.

Building means the main portion of each structure, all projections or extensions therefrom and any additions or changes thereto and includes, without limitation, garages, outside platforms, docks, carports, canopies, eaves and porches.

Commercial aeronautical activity (CAA) means a person that leases land from the city or a facility from another CAA and is approved by the town to provide commercial aeronautical products or services to the public. Such activities include, but are not limited to, fixed based operation (FBO).

Common Area means that portion of the airport, which is now or hereafter considered by the FAA, TxDOT, the town, or any other regulatory agency with oversight of the airport to be the obligation and responsibility of the town to operate and maintain for the common use and benefit of the general aviation public. The Common Area includes, without limitation, any air navigation facility or structure designed and intended to serve the general public not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; any other facility or facilities at the Airport that are eligible for federal or state grants or subsidies awarded on the basis of their serving the benefit of the public (including runways, taxiways, vehicle streets and alleys, public aircraft

aprons/tarmac, vehicle parking areas, and drainage structures); field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the airport; directional signs; and perimeter or restricted access fences. The Common Area shall be under the control and management of the town and may be rearranged, modified, changed or terminated at the town's discretion. The Common Area, as of _____, 201____, is shown in Appendix 1 – Addison Airport Common Facility Map to this division (which Appendix is incorporated into and made a part of this division), which identifies the Common Area as both the red shaded and yellow shaded areas.

Disabled aircraft means an aircraft that has become disabled as the result of an incident, accident or for any other reason on any portion of the airport.

Employee means an individual who works for an aircraft owner, and for which the aircraft owner files federal income taxes and tax withholding with the IRS on behalf of the employee.

Entity means a person, firm, corporation, partnership, limited liability company, or other entity recognized in law.

Equipment means equipment, machinery, tools and other supplies and materials.

Escort means a person and/or vehicle authorized to access the AOA who accompanies and is responsible for the actions of another person and/or vehicle that is otherwise not authorized to access the AOA.

FAA means the Federal Aviation Administration.

Fuel farm means a facility located on the airport owned by the town and leased, in whole or in part, to third parties in which above-ground bulk fuel storage tanks are located and which facility is designed to contain fuel spills or leaks from entering the environment.

Ground Vehicle Training Program means a training class or course offered by the Airport Director to provide awareness and to teach how a person shall access the Airport safely and correctly.

Hangar means a shelter and all required components constructed especially for storing aircraft.

Lease means a contractual agreement between the town and an entity granting a concession or otherwise authorizing the conduct of certain activities, which is in writing and enforceable by law.

Minimum Standards means the standards adopted from time to time by the town or the airport manager that provide threshold entry requirements for those wishing to perform commercial aeronautical activities, which provide aeronautical products and services to the public, at the airport.

Movement area means that portion of the Common Area, including taxiways and runways, which is used for take-off, landing, taxiing and maneuvering of aircraft, and which requires explicit authorization from the ATC prior to entry or access during the ATCTs hours of operation. The movement area as of _____, 20__, is shown in Appendix 1 – Addison Airport Common Facility Map to this division, which identifies the movement area as both the red shaded area.

Non-movement area means that portion of the Common Area which is used to provide a path for taxiing and maneuvering of aircraft to a taxiway (such as aprons, taxilanes, and all other areas within the paved portions of the Common Area) and does not require prior permission from the ATCT to enter and access. The non-movement area as of _____, 20__, is shown in Appendix 1 – Addison Airport Common Facility Map to this division, which identifies the non-movement area as both the yellow shaded area.

NTSB means the federal National Transportation Safety Board.

Patio hangar means a hangar that consists of a multiple number of individual t-shaped bays or units, each suitable for the storage of a single aircraft, and each bay or unit of which is not fully enclosed.

Park or parking means to stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers.

Person means an individual, corporation, company, association, firm, partnership, society, government, tenant, lessee, concessionaire, passenger, visitor, customer, contractor, and other entities doing business on, employed at, or otherwise using town property as the context shall deem appropriate. It includes a trustee, receiver, assignee, successor or similar representative of any of them.

Rules and Regulations means rules and regulations for the use of the airport prepared and maintained by the Airport Director.

Runway means a portion of the movement area used for the takeoff and landing of aircraft.

Service Provider is any person, operator or business on the airport that has been authorized by the town to offer a public service to aeronautical users of the airport for a fee and has met the requirements of the Minimum Standards.

Stand means to halt an occupied or unoccupied vehicle, other than temporarily while receiving or discharging passengers.

Taxilane means the portion of the apron or non-movement area used by aircraft for access between taxiways and aircraft parking positions.

Taxiway means a portion of the movement area that is used for taxiing aircraft from one part of the airport to another.

Tie-down means the area, paved, suitable for parking of aircraft, and/or wherein suitable tie-down points have been located.

T-hangar means a hangar that consists of a multiple number of individual T-shaped bays or units, each suitable for the storage of a single aircraft, and each bay or unit of which can be fully enclosed by a door located within a single door opening.

Town means the Town of Addison, Texas. Where approval, enforcement or other act on the part of the town is referred to herein, the town shall act by and through its town ordinances unless otherwise specifically indicated.

Unauthorized access means to gain access to the AOA without properly using an airport authorized access control method, an escort or explicit authorization from the Airport Director to do so.

Unauthorized Person means a person that has not completed the Ground Vehicle Training Program and thus, is not authorized to be within the Common Facility without an authorized person.

Vehicle means and includes automobiles, trucks, buses, motorcycles, tractors, all-terrain vehicles, golf carts, go-carts, go-peds, or any other device in or upon any person or property may be transported, other than aircraft.

Other terms used in this division may be defined elsewhere herein.

Section 14-61B. Use of Airport, Generally.

(a) Adherence to this Division, Airport Rules and Regulations, Other Laws. All persons on or using the airport shall adhere to the provisions of this division and of the Rules and Regulations at all times, unless a federal or state law directly conflicts with this division or the Rules and Regulations.

(b) Minimum Standards. A commercial aeronautical activity at the Airport shall comply with all applicable requirements concerning such activities as are set forth in the Minimum Standards and the Rules and Regulations.

(c) Responsibility to Control Property. All persons who have a lease, license, permit, or other authorization from the town to use the airport shall control any property that might be subject to such lease, license, permit or other authorization so as to prevent unauthorized access to such property and the AOA. Controls may include physical barriers, access control devices or procedures approved by the Airport Director.

(d) Through-the-Fence. No person shall be permitted aircraft access to or from the airport without a valid access permit being issued in accordance with Division 3 of this article.

(e) Fire Regulations.

(1) Every person going upon or using the airport or its facilities in any manner shall exercise the greatest care and caution to prevent fire.

(2) Aircraft shall not be fueled while the engine is running unless approved by an authorized and permitted fuel service provider or while in any hangar or other enclosed place.

(3) Fueling of aircraft shall occur only outdoors, and in accordance with National Fire Protection Association Standard Part 407 (NFPA 407), Standard for Aircraft Fuel Servicing, current edition.

(f) *Impoundment of Aircraft or Vehicles.* No person may by physical obstruction or the use of force interfere with the lawful process of impoundment of any aircraft or vehicle. No person may be in, tamper with, damage, operate or open any vehicle or aircraft under lawful impoundment. No person may open, cut, damage, or tamper with any lock, chain, cable, fence or gate or other device used in the impoundment of any aircraft or vehicle.

(g) *Signals.* No person shall fail or refuse to obey the signals of any airport employee or flagman posted by a tenant, contractor, airport official or other person authorized by the Airport Director to regulate the movement of aircraft and vehicles upon ramps or aprons, unless to obey would create a greater hazard than unregulated movement.

(h) *Special Movement-Controlling Devices or Markings.* Unless otherwise authorized by the Air Traffic Controller or the Airport Director, every person operating an aircraft or vehicle or going on foot on or within the airport shall obey and conform to official walkways, hold-short lines, movement area boundary markings, taxi lines, stop lines, turn lines, clearance lines and any other marks or devices officially installed for the regulation or movement within the Airport Operations Area.

(i) *Observing an Accident.* No person shall enter the airside area for the purposes of observing, attending, or assisting at the scene of an accident except persons authorized by law or otherwise requested by or with consent of the Airport Director.

Section 14-62. Town to be free of liability.

No liability shall accrue to the town, its officers, agents or employees for towing, removal, impoundment, storage or disposition of aircraft or their contents under this article.

Section 14-63. Trespass prohibited.

(a) It shall be unlawful and an offense for any person to enter or remain on landing, take-off, taxiing and safety zone areas or any other restricted airport property on the Addison Municipal Airport without effective consent where such person had notice that the entry was forbidden or where such person received notice to depart but failed to do so.

(b) For purposes of this section:

(1) *Airport operator* means the entity with whom the town has contracted to manage and operate the airport.

(2) *Effective consent* means permission given by authorized Federal Aviation Administration (FAA) personnel, authorized personnel employed by the airport operator or authorized personnel employed by the town.

(3) *Entry* means the intrusion of the entire body.

(4) *Notice* means:

a. Oral or written communication by authorized personnel employed by the Federal Aviation Administration, the air traffic control tower, the airport operator, or the town;

b. Fencing or other enclosure obviously designed to exclude intruders; or

c. A sign posted on the property which sign is reasonably likely to come to the attention of intruders and which indicates that entry is forbidden.

(5) *Restricted airport property* means all paved and unpaved areas of the Addison Municipal Airport which areas are specifically reserved for use of the actual operators of licensed aircraft, the aircraft crews, incoming and outgoing passengers in aircraft, employees of the town or airport operators, and such other persons as may be authorized to enter thereon by reason of their official duties in connection with the maintenance, inspection and operation of the aircraft and the airport.

(c) It is a defense to prosecution under this section that a person has received permission to enter restricted airport property from authorized Federal Aviation Administration, airport operator, air traffic control tower, or town personnel.

Sec. 14-64. Aircraft ground operations ~~Parking of aircraft.~~

(a) *Parking of aircraft.*

(1) No person shall park, leave parked, or allow to remain stationary any aircraft at the airport except within a designated aircraft parking and storage area and outside of any common facility. No part of any aircraft should be parked on or hang over the extent of a designated aircraft parking and storage area. Aircraft will be parked only in assigned, leased or otherwise properly designated and authorized areas pursuant to the directives of the tower personnel or other appropriate airport officials acting under the direction or authority of the town.

(2) ~~All~~ ~~Parked, unattended~~ aircraft ~~not located in a hangar~~ shall be chocked or tied down ~~when unattended if remaining overnight~~ and during periods of inclement weather. No aircraft will be parked in ~~restricted~~ ~~restrictive~~ areas, including, without limitation, any protected area (object free area, runway safety area, etc.) as described in FAA Advisory Circular 150/5300-13 (and as the same may be amended or superseded).

(3b) ~~Without limiting the foregoing, a~~ Aircraft shall not be parked in a movement area, or in such a manner as to hinder the normal maneuvering or operation of other aircraft, unless specifically authorized by the airport ~~air traffic control tower personnel, the Airport Director, or officials or other personnel acting under the direction or authority of the town~~ ATC as an emergency measure.

(4) ~~Aircraft shall not be parked closer than fifty (50) feet from the fuel farm, a fuel storage tank, or fuel service truck parking area.~~

~~(b) **Sec. 14-65.** *Illegally parked aircraft; Abandoned Aircraft.*~~

(1) ~~Aircraft which are parked, stored or abandoned contrary to the provisions of section 14-64(a) may be impounded. The return of an impounded aircraft may be conditioned on~~ ~~Redemption of aircraft which has been impounded will necessitate~~ the owner or operator ~~thereof~~ paying all fees accrued against such aircraft to include towing and storage fees incident to impoundment.

(2) ~~The Airport Director or other duly authorized representative of the town may relocate or remove or cause to be relocated or removed any aircraft that is abandoned, parked in violation of this division or any airport rule, regulation, or standard, or which in the determination of the Airport Director presents a security, fire or operational hazard or interferes with the ability of the airport to maintain the premises or any part of the airport, at the operator's expense and without liability for damage which may result in the course of such removal. The town or its authorized agent may relocate or remove or cause to be relocated or removed such aircraft from an illegally parking place by, among other things, engaging private towing services or a fixed-based operator; the owner of such aircraft shall be solely responsible for any damages which may result from such relocation or removal. Any costs or charges resulting from such activities shall be charged against the registered owner of the aircraft.~~

(3) ~~In the event the town is unable to determine the ownership of an aircraft that has been located for more than 90 days at the airport, the town may dispose of the same in accordance with subchapter Z of Chapter 22 of the Texas Transportation Code, as the same may be amended or superseded.~~

~~(c) *Running of Aircraft Engines; Exhaust and Propeller Blasts.*~~

(1) ~~Aircraft engines shall only be operated at idle except as may be necessary for safe taxiing operations, take off, landing, preflight testing, and maintenance~~

testing. At no time shall any aircraft engine be operated while the aircraft is in a hangar or covered tie down space. This includes the action of taxiing an aircraft into or out of a hangar. No aircraft shall be left unattended with engines operating.

(2) All aircraft maintenance engine run-ups are prohibited except each day between the hours of 6:00 a.m. and 10:00 p.m. at the run-up areas located at the north and south ends of Taxiway Alpha as show on the Airport Layout Plan or advised by the air traffic control tower. Aircraft maintenance engine run-ups may be permitted at other locations on the airport as authorized by the Airport Director on a case by case basis. For purposes hereof, an "engine run-up" is the operation of an engine at any power setting in excess of normal ground idle.

(3) No aircraft engine shall be started or aircraft taxied where the exhaust or propeller blast may cause injury to any person, cause damage to any property, or spread debris within the AOA.

(d) *Taxiing aircraft.*

(1) Aircraft shall be taxied at speeds that will ensure complete control at all times.

(2) No aircraft shall be taxied except on areas designated for taxiing.

(3) There shall be no taxiing of aircraft by engine power into or out of hangars.

(e) *Arrangement requirements.* No aircraft shall be parked at or on the airport unless its owner or operator has made arrangements with the town or with a business entity that leases land or a building from the town and is authorized to provide commercial aeronautical activity.

(f) *Aircraft parking/tie-down.* No person may offer to provide or may use any tie-down space unless the tie-down space has at least three-point tie-downs, which can accommodate ropes or chains adequate to hold aircraft immobile in whole gale-force winds (55 to 63 mph).

(g) *Violation; Compliance with Rules and Regulations.* It is a violation of this division for any aircraft to be parked, stored or abandoned contrary to the provisions of this division. No person shall operate an aircraft on the airport except in accordance with this division, the rules prescribed by the Airport Director set forth in the airport Rules and Regulations, and all federal, state and local laws, rules, codes, standards, grant assurances, and regulations.

Section 14-65. Reserved.

Section 14-66. Damage to property incident to aircraft operation.

(a) Any damage to airport installation, equipment or property as a direct or indirect consequence of flight or taxi operation shall be prima facie, the responsibility of the owner of the aircraft causing such damage. Repair of such damage shall be ordered and accomplished by the airport operator by sending an invoice covering the cost thereof, payable upon receipt, to the responsible owner.

(b) The repair of any aircraft damaged or disabled in the course of operation on the airport is the responsibility of the owner thereof:

(1) Damaged or disabled aircraft obstructing or impeding flight operations or in any manner creating a hazard to flight or airport operational safety shall be cleared from runways or taxiways upon the direction of the airport operator as quickly as accident investigators from the federal Department of Transportation authorize removal, or sooner if an airport emergency exists as declared by the operator of the airport, so as to permit resumption of hazard-free operations of the airport at the earliest practicable time. Any extraordinary expense incurred in such clearing or removal of aircraft shall be billed to the owner of the responsible aircraft and be payable by such person upon receipt of the invoice.

(2) Damaged or disabled aircraft parked or stored in an authorized, assigned, leased or otherwise properly designated area in excess of 30 days operable condition will, in the absence of special arrangements with and permission of the airport operator, be deemed abandoned aircraft and subject to impoundment as illegally parked aircrafts under section 14-645.

(3) Repairs to aircraft damaged while in motion or parked on the airport are the sole responsibility of the owner. The owner or operator accepts the premises as is and receives no assurances from the town, other than those required by Federal Aviation Administration and leases that may be in effect on the airport.

Section 14-67. Town's liens on impounded aircraft.

The town shall have a lien on aircraft impounded for the storage and care thereof. Notification to the owner of impounded aircraft shall be conclusively presumed given if, after accrual of 60 days of unpaid storage charges or fees, the registered owner of such aircraft is advised by registered or certified letter, return receipt requested, of the fact of impoundment, delinquency in payment of the charges, the town's lien for the payment of such charges, and the contemplated public sale of such aircraft following the expiration of 30 days after mailing of such notice, unless payment or suitable arrangements for payments have been made.

Section 14-68. Vehicles and Other Modes of Transportation.

(a) No unauthorized vehicles or pedestrians. No person shall operate a vehicle on or within, or otherwise access or be located within (whether on foot or otherwise), the AOA or any portion of the Common Area except in accordance with this division, all applicable federal, state and local laws, rules, regulations, orders, and directives, and with rules prescribed by the Airport Director.

(1) No person shall access, whether by vehicle, on foot or otherwise, any portion of the Common Area unless the person has attended and completed the Ground Vehicle Training Program provided by the airport unless being escorted by a person that has successfully completed the Ground Vehicle Training Program. A person who has successfully completed the Ground Vehicle Training Program will be issued a 2-year permit that authorizes the person to operate a vehicle with the Common Area, subject to this division.

(2) A person operating a vehicle within or otherwise accessing (in any manner whatsoever, including on foot) the Common Area shall have, and no person shall access the Common Area unless accompanied by a person who has, attended and successfully completed a Ground Vehicle Training Program provided by the airport and who holds a current permit reflecting such attendance and passage. While accessing the Common Area, a person who has attended and successfully completed a Ground Vehicle Training Program provided by the airport shall at all times carry the said permit and, if also operating a vehicle within the Common Area, a hang tag issued by the airport upon the person's successful completion of the Ground Vehicle Training Program.

(3) All vehicles accessing the movement area must be equipped to maintain two-way communications with the ATCT and be marked or lit in accordance with FAA guidelines, or be escorted by another vehicle so equipped.

Any vehicle authorized to operate on the airport runway or taxiways shall display a rotating beacon that complies with latest edition of FAA Advisory Circular 150/5210-5 and is visible to the Air Traffic Control Tower personnel. Exceptions to this rule must be authorized in writing by the Airport Director. Such vehicle must receive a clearance from, and remain in continuous communications with, the Airport Traffic Control Tower.

(4) Only government, law enforcement, emergency vehicles or other vehicles with prior written authorization from the Airport Director shall be permitted to operate a vehicle on the movement area.

(5) All vehicles must obtain clearance prior to entering the movement area and maintain communications with the ATCT at all times when operating in the movement area. When the ATCT is closed, FAA procedures for uncontrolled airports apply.

(b) *Yield to Aircraft, Emergency Vehicles; Distance to Taxiing Aircraft, Aircraft with Running Engines.* All vehicles shall yield right-of-way to aircraft in motion and emergency vehicles. A vehicle shall pass no closer than one-hundred feet to the rear of taxiing aircraft. No vehicle shall approach closer than one-hundred feet to any aircraft whose engines are running, excluding ground service and emergency vehicles.

(c) *Air Traffic Controller Authority.* Except for the operator of an authorized emergency vehicle operating under emergency conditions, no person traveling in a vehicle, on foot, or by any other means within the movement area shall fail or refuse to obey the instructions of the Air Traffic Controller.

No person shall be upon the movement area either on foot, in a vehicle, or by any other means, except with permission of the Air Traffic Controller and only, as applicable, after successfully attending and completing a Ground Vehicle Training Program, unless such person is escorted by a user that has successfully completed the Ground Vehicle Training Program and the person has obtained permission from the Air Traffic Controller to enter the movement area.

During hours when the Addison air traffic control tower is not in operation, any aircraft (whether being operated by a pilot or a mechanic), vehicle, or pedestrian operating within the movement area of the Airport shall utilize the common traffic advisory frequency (CTAF), 126.0 MHz, and be required to broadcast intentions as advised in the Aeronautical Information Manual (AIM).

(d) *Airport Access Gate Closure.* All persons, upon entering or exiting through an airport access gate or a gate that permit ingress and egress to the Airport Operations Area, shall ensure that the gate closes completely behind their vehicle prior to leaving the vicinity of the gate to ensure that no unauthorized vehicles or persons gain access thereto.

(e) *No Unescorted Access.* No authorized person may give unescorted access to the airport to any unauthorized person.

(f) *Application of Traffic Laws.* State laws regulating pedestrians, vehicle operators, passengers, vehicles and their movements and all town traffic ordinances shall have full force and effect on the airport; provided, however, to the extent of any conflict between this division and the provisions of such laws and ordinances, the terms of this division shall control.

(g) *Use of Airport Access Ways and Walkways.* No person shall operate a vehicle within the airport except on paved access ways or places provided for vehicular use, nor use the airport access ways or walkways in any manner, as to hinder or obstruct their use by others. No person shall walk, stand, or remain in the airside area if such activity is determined to be an operational or safety concern as determined by the Airport Director.

No person shall operate a vehicle across or upon any lawn or grass area, sidewalk or curb within the airport except by permission of the Airport Director or as directed by a law enforcement officer or except as necessary to service or maintain airport facilities.

(h) *Use of Parking Areas Leased or Licensed to Persons.* No person may operate a vehicle upon or within any parking area or facility within the airport that has been leased or licensed by the town to a person except in the course of doing business with that person, or in the course of duty as an employee or agent of that person, or as necessary to service or patrol such facility, or as necessary to obtain access to property adjacent to such facility

when no other reasonable means of access exists and such access has been authorized by such person.

(i) *Prohibition on Blocking Access.* No person may stop, stand or park a vehicle so as to block the entrance or exit of or to any parking lot, driveway or aircraft ramp area within the airport.

(j) *Parking.*

(1) No vehicle shall stop, stand or park in any area of the airport where parking is prohibited by any sign, pavement marking, or other posted signal. Fuel trucks used or operating at the airport must be parked only in accordance with the standards specified in the National Fire Protection Association Standard Part 407 (NFPA 407), Standard for Aircraft Fuel Servicing, current edition.

(2) No person shall park or leave any vehicle standing, whether occupied or not, within the airport except within a designated parking area.

(3) Aircraft owners and Service Providers shall only park their vehicles in the aircraft storage and parking space designated for their aircraft.

(4) Vehicles parked in an aircraft parking and storage area shall be parked in a manner so as to be completely contained in the aircraft parking or storage area and shall not obstruct any adjacent aircraft parking and storage areas or any taxilanes unless for the purposes of immediate and temporary loading, unloading, or staging of an aircraft.

(k) *Speed.* A person commits an offense if he operates a vehicle within the Airport Operations Area at a speed greater than 15 miles per hour, unless otherwise provided by the town. Any speed in excess of 15 miles per hour within the Airport Operations Area, unless otherwise provided by the town's code of ordinances, shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. This subsection does not apply to authorized government vehicles, or vehicles authorized by the Airport Director, in the performance their duties.

(l) *Removal of Vehicles.* With the exception of vehicles parked in hangars as may be authorized by a lease or by Rules and Regulations applicable to the airport, the Airport Director may remove or cause to be removed from any property at the airport any vehicle that is (i) disabled, (ii) abandoned, (iii) parked, stopped, or standing in violation of this division or any other ordinance of the town, or (iv) which presents an operational hazard, solely at the vehicle owner's expense and without liability for damage which may result in the course of such removal. In removing an abandoned vehicle at the airport, the provisions of Chapter 683 of the Texas Transportation Code, if applicable, shall be followed. The removal of any such vehicle shall be at the vehicle owner's or operator's sole expense.

(m) Scooters, Go-carts, Other Miscellaneous Vehicles. The use of any scooter, go-cart, golf cart, moped, skateboard, rollerblades, all-terrain vehicles, motorized ice chest, motorized bar stool, or similar vehicle, instrument or device within the Airport Operations Area is prohibited. This subsection does not prohibit the use of vehicles used solely for tugging, marshalling, or refueling aircraft, or golf carts used by those who have successfully completed the Ground Vehicle Training Program and been issued a permit by the Airport Director evidencing such successful completion. On a case by case basis, and with the prior written approval of the Airport Director, other modes of transportation may be used on the airport.

(n) Motor Homes, Boats, Recreational Vehicles. No motor home, boat, or recreational vehicle shall be parked or stored within the airport without the prior written approval of the Airport Director.

(o) Bicycles. The use of bicycles within the airport shall only be permitted during daylight hours and in accordance with all applicable regulations set forth herein for vehicles, as may be applicable.

(p) Vehicle Traffic. No person shall operate a vehicle on or within the air operations area except in accordance with federal, state and local laws and the following:

(1) Only persons with a valid operator's license recognized by the state shall operate a vehicle on or within the airport (save and except for the operation of ground support equipment).

(2) All vehicles operating on or within the airport shall at all times maintain the minimum amount of liability insurance required by state law.

(3) No vehicle shall gain unauthorized access to the AOA. No person shall operate any vehicle upon or within the Common Area without having first obtaining an approved permit issued by the airport and an airport vehicle hang tag (each of the permit and the hang tag evidencing successful completion of a Ground Vehicle Training Program).

(4) Aircraft, emergency vehicles, and pedestrians always have the right-of-way within the airport, and vehicles shall yield to the same.

(5) No vehicle shall not operated at or within the airport (i) in a reckless or careless manner, (ii) in disregard of the rights and safety of others, (iii) without due caution, (iv) at a speed or in a manner which endangers or is likely to endanger persons or property, (v) while the driver would be prohibited by law from operating a vehicle upon the public streets of the town due to drug or alcohol impairment or influence, (vi) if the vehicle is so constructed, equipped or loaded as to endanger or be likely to endanger persons or property, or to result in the load or other materials becoming separated from the vehicle, or (vii) in a manner that does not allow the vehicle to be immediately driven or towed away from any nearby aircraft in case of emergency.

(6) No vehicle shall be operated on or within the airport except for those in sound mechanical condition, including, without limitation, with operable headlamps and taillights at night and during periods of reduced visibility. This provision shall not apply to golf carts, aircraft tugs and wheel chairs.

(7) The operator of a vehicle is responsible for the operator's actions and the actions of their passengers while on or within the airport.

(q) *Vehicle Equipment.*

(1) *Headlamps, rear lamps.* A vehicle operated by a person within the airport shall comply with the provisions of state law governing the operation of vehicles during non-daylight hours, including provisions relating to the use of headlamps and rear lamps.

(2) *Service brakes.* A person may not operate a motor vehicle at the Airport unless the vehicle is equipped with brakes that comply with the requirements of the Texas Transportation Code.

(3) *Parking brakes.* A person may not operate or tow a vehicle at the airport unless the vehicle is equipped with parking brakes to prevent the vehicle's free rolling due to wind, jet blast, or propeller blast.

(4) *Unobstructed view.* A person may not operate a vehicle unless the person has clear visibility to the front, sides and rear from the driver's position.

(5) *Unsafe condition.* A person may not operate a vehicle if it is so constructed, equipped, loaded or in a state of disrepair that endangers persons or property.

(r) *Aircraft Towing.* No vehicle shall be used to tow or move an aircraft unless the vehicle is designed for such use, except in the case of an emergency requiring timely removal of the aircraft.

(s) *Vehicle Washing, Repair.* Washing of vehicles within the airport is prohibited. No person shall repair or provide maintenance on any vehicle on or within the airport, except such minor repairs as may be necessary to remove a vehicle from the airport. This provision does not apply to ground support equipment or vehicles used in the sole operation of a Service Provider's operation, and are owned or leased by the Service Provider.

Section 14-69. Hangars. The provisions of this section apply to aircraft hangars (other than T-hangars and patio hangars), T-hangars, patio hangars, and tie-downs that are owned and/or operated by the town.

(a) *Aircraft Hangars (other than T-Hangars and Patio Hangars).*

(1) Aircraft hangars (other than T-hangars and patio hangars) shall be used only for the following purposes:

a. Storage and parking of aircraft and associated aircraft equipment and supplies as approved by the town fire department and Airport Director, and such uses as may be expressly specified in a valid lease agreement between the town and the tenant;

b. Parking of vehicles while the aircraft which is authorized to be parked and stored in the hangar is in use and operation; and

c. Major repairs and minor repairs; provided, however, that unless a hangar is rated for maintenance activities, such repairs must be performed in the hangar by the owner of the aircraft being repaired and with the prior approval of the Airport Director and the town's fire department; but such prior approval is not required if such major repairs and/or minor repairs are expressly permitted pursuant to a valid lease agreement between the town and the tenant.

(2) In connection with an aircraft hangar (other than a T-hangar and a patio hangar):

a. Aircraft parked in hangars shall be parked in a manner so as to be completely contained in the aircraft parking space and not obstruct adjacent aircraft parking and storage areas or taxilanes, except for purposes of immediate and temporary staging and fueling of such aircraft; and

b. Oily rags, oil wastes, rags, and other rubbish and trash shall be stored in containers with self-closing, tight-fitting lids as approved by the Airport Director or the town's fire department.

c. Oxygen or any combustible compressed gas in a cylinder or portable tank must be secured to a fixed location or secured to a portable cart designed for the cylinder(s) or tank(s). Compressed gas cylinders or tanks must have pressure relief devices installed and maintained. Cylinders or tanks not in use shall have a transportation safety cap installed.

d. Batteries shall only be charged while the tenant of the aircraft hangar, a Service Provider, or the owner of an aircraft for which the battery is being charged, is in attendance. Aircraft batteries shall not be connected to a charger when installed in an aircraft located inside or partially inside a hangar.

e. All flammable and/or combustible fluids shall be properly stored in approved containers and fire proof cabinets.

(3) Except as may be otherwise authorized in an applicable lease, any construction that involves moving walls or changing the structure of an aircraft hangar (other than T-hangars and patio hangars) or related building must be approved in writing by the Airport Director.

(4) Aircraft hangars (other than T-hangars and patio hangars) shall be and are subject to annual and periodic inspections by the Airport Director and the town fire department to determine compliance with all laws, ordinances, codes, rules, regulations, and standards.

(b) Aircraft T-Hangars.

(1) Aircraft T-hangars shall be used only for the following purposes:

a. Storage and parking of aircraft which are specifically identified in a valid lease agreement between the town and the tenant of the T-hangar, and associated aircraft equipment and supplies as approved by the town fire department and Airport Director; and

b. Parking of vehicles while the aircraft which is authorized to be parked and stored in the hangar is in use and operation; and

c. Aircraft maintenance, but only minor repairs, to aircraft of the tenant of the T-hangar.

(2) In connection with a T-hangar:

a. Aircraft parked in a T-hangar shall be parked in a manner so as to be completely contained in the aircraft parking space and not obstruct adjacent aircraft parking and storage areas or taxilanes, except for purposes of immediate and temporary staging and fueling of such aircraft.

b. Minor repairs to an aircraft within a T-hangar shall be performed by certified maintenance personnel, provided the same is performed within the confines of the T-hangar, does not interfere with the operation of adjacent tenants, and does not disrupt or interrupt the services of utilities. Major repairs and preventative maintenance within a T-hangar are prohibited.

c. Within a T-hangar, oxygen or any combustible compressed gas in a cylinder or portable tank must be secured to a fixed location or secured to a portable cart designed for the cylinder(s) or tank(s). Compressed gas cylinders or tanks must have pressure relief devices installed and maintained. Cylinders or tanks not in use shall have a transportation safety cap installed.

d. Batteries shall only be charged while the tenant of the T-hangar hangar, a Service Provider, or the owner of an aircraft for which the battery is being charged, is in attendance. Aircraft batteries shall not be connected to a charger when installed in an aircraft located inside or partially inside a hangar.

e. All flammable and/or combustible fluids shall be properly stored in approved containers and fire proof cabinets.

(3) No commercial maintenance activities shall be conducted in a T-hangar; however, such prohibition does not preclude the tenant of a T-hangar from inviting certified maintenance personnel to perform maintenance work in the T-hangar. Any such work must be performed within the confines of the leased site and shall not interfere with the operation of adjacent properties. Any certified maintenance personnel conducting work for compensation on aircraft of the tenant shall comply with the Minimum Standards.

(4) Except as may be otherwise authorized in an applicable lease, any construction that involves moving walls or changing the structure of a T-hangar must be approved in writing by the Airport Director.

(5) A T-hangar is subject to annual and periodic inspections by the Airport Director and the town fire department to determine compliance with all laws, ordinances, codes, rules, regulations, and standards.

(c) Aircraft Patio Hangars and Tie-Downs.

(1) Patio hangars and tie-downs shall be used only for the following purposes:

a. Storage and parking of aircraft specifically identified in a valid agreement between the town and the tenant of the patio hangar or tie-down;

b. Aircraft preventative maintenance, but only minor repairs to aircraft specifically identified in a valid agreement between the town and the tenant of the patio hangar or tie-down.

(2) In connection with patio hangars and tie-downs:

a. Aircraft parked in a patio hangar or tie-down space shall be parked in a manner so as to be completely contained in the aircraft parking space and not obstruct adjacent aircraft parking and storage areas or taxilanes, except for purposes of immediate and temporary staging and fueling of such aircraft.

b. Minor repairs to an aircraft within a patio hangar or in a tie-down space shall be performed by certified maintenance personnel, provided the

same is performed within the confines of the patio hangar or tie-down space and does not interfere with the operation of adjacent tenants. Major repairs within a patio hangar or tie-down space are prohibited.

c. All flammable and/or combustible fluids shall be properly stored in approved containers and fire proof cabinets. The storage of such material shall be limited to a total of 5 gallons.

(3) Except as may be otherwise authorized in an applicable lease, any construction that involves moving walls or changing the structure of a patio hangar must be approved in writing by the Airport Director.

(4) A patio hangar and tied downs are subject to annual and periodic inspections by the Airport Director and the town fire department to determine compliance with all laws, ordinances, codes, rules, regulations, and standards.

Section 14-70. Aircraft Washing.

Aircraft washing may only take place inside hangar areas with floor drains discharging to the treated sewage system, on paved non-movement areas within the air operations area, or on a specially designated aircraft washing area (“aircraft washrack”). Aircraft washing conducted on paved non-movement areas must be accomplished without the use of soaps, detergents, solvents, or de-greasers and must be conducted using a low-pressure, non-surfactant wash. Prior to washing an aircraft on a paved non-movement area, the area must be inspected for signs of pollutants (e.g., stained pavement or dead vegetation). If signs of pollution are discovered, the area must be properly cleaned before aircraft washing may commence.

Section 14-71. Storm Water Pollution Prevention.

All persons using or operating from the airport shall be familiar with and comply at their own expense with all requirements of the airport's storm water pollution prevention plan and spill prevention and countermeasure control plan, which includes, but is not limited to:

(a) Construction and maintenance of facilities and infrastructure (public or private).

(b) Application for a notice of intent or no exposure certification, annual training, preparation and implementation of procedures, certification of non-storm water discharges, collection and testing of storm water samples, implementation of good housekeeping measures and/or best management practices and maintenance of records.

(c) No person may discharge any non-permitted non-storm water discharges or hazardous materials onto the airport or its navigable waterways. Any person who discharges any hazardous materials must follow established spill response procedures and promptly abate, remediate and remove said hazardous materials.

Section 14-72. Airport Access Road.

The airport access road, as identified in _____ which is on file in the office of the Airport Director, shall only be used by authorized vehicles, including all airport administration vehicles, fixed base Service Provider fuel trucks, and other vehicles with prior written approval from the Airport Director. All vehicles using the airport access road must be equipped with a rotating beacon. All persons operating any vehicles on the access road must attend a ground vehicle training class that is provided by the airport management. In any event, no vehicles shall be allowed, used, operated, or located beyond Taxiway P (as identified in _____ which is on file in the office of the Airport Director) while the airport is under instrument flight rule conditions.

Section 14-73. Smoking.

Smoking, lighting a match, and lighting a lighter are prohibited within the airport (a) within fifty (50) feet of any aircraft, fuel truck, or fuel storage area, (b) within two hundred feet (200) of the airport bulk storage fuel farm facility, and (c) in any hangar. No person shall possess a match, lighter or other flame-producing device within (a) within fifty (50) feet of any aircraft, fuel truck, or fuel storage area, (b) within two hundred feet (200) of the airport bulk storage fuel farm facility, and (c) in any hangar.

Sec. 14-74. Accident Reports.

Any person damaging any town-owned or leased improvements or land by operation of an aircraft, motor vehicle or otherwise shall immediately report the same to the Airport Director, but in any event not later than forty-eight (48) hours following such damage. Repair of such damage shall be ordered and accomplished by the Airport Director. The person responsible for said damage shall pay the town the full cost for repairs upon receipt of an invoice from the town.

Sec. 14-75. Interference with Aircraft.

No person shall (a) interfere or tamper with any aircraft, (b) put in motion the engine of any aircraft, or (c) use any aircraft, aircraft parts, instrument or tools, without the express permission of the aircraft owner or the owner' designated representative, or under the specific direction of the Airport Director in an emergency as determined by the Airport Director.

Council Agenda Item: #R8

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:

The Town budgeted for a 10% increase in health insurance costs. However, the Town was able to negotiate the overall renewal from 17.7% to 9%.

The financial impact of a 9% increase would be \$216,000.00 for a year and \$162,000.00 for the nine months of FY2011.

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 through 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 last 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: #R9

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 2 with Austin Bridge & Road, L.P., in an amount not to exceed \$110,000.00 and an extension of twenty-three (23) calendar days for the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (From the \$3,630,056 Allocated for Phase 1D by the Master Facilities Agreement, Revised Exhibit "C1"). The current construction contract amount is \$4,599,070.45. The project manager is Tom Forrest.

BACKGROUND:

The change order includes additional items added after contract award. These items include:

1) lightning protection for the arches for both the Ponte Avenue and Bella Lane Bridges, 2) conduit attached to the underside of the Bella Lane Bridge through which future irrigation piping will be routed, 3) miscellaneous rebar revisions required during construction, and 4) waterproofing at the Ponte Avenue Bridge abutments.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner, Promote Quality Transportation Services

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R10

AGENDA CAPTION:

Presentation, discussion and consideration of approval of a Funding Agreement between the Town, the North Central Texas Council of Governments (NCTCOG), and the State of Texas to be applied to Sustainable Development projects.

FINANCIAL IMPACT:

See green highlighted items on attached spreadsheet. This agreement provides for reimbursement to the identified projects from NCTCOG and TxDOT of an amount not to exceed \$2,937,600 with a local match of \$734,400.

BACKGROUND:

The attached Funding Agreement is between the Town, the North Central Texas Council of Governments (NCTCOG), and the State of Texas. The Agreement provides for funding by the State, under NCTCOG's management, to the Town in order to help pay for construction of portions of the Vitruvian Park Phase 1C, Vitruvian Park Phase 1D, Spring Valley Road, Redding Trail / DiSD campus, and the Bicycle Trail loop around Brookhaven College. NCTCOG serves as the metropolitan planning organization (MPO) for the North Texas region. An MPO is mandated by the federal government for urbanized areas that have a population greater than 50,000, and is transportation policy-making organization that is made up of representatives from local governments. NCTCOG was designated as the MPO by the Governor in 1974, with the condition that the Regional Transportation Council (RTC) be the decision-making group for regional transportation policy. The RTC makes recommendations involving the regional transportation system.

In 2007, the RTC selected the North Texas Tollway Authority to finance, design, construct and maintain State Highway 121 in Denton and Collin counties. The NTTA proposal included various payments, including an initial payment of \$2.5 billion. A portion of the funds, being surplus regional toll revenues, were designated to

go to needed transportation projects in the region.

In 2009 the RTC sought proposals for transportation projects in its “Sustainable Development Call for Projects.” The sustainable development program seeks to reduce auto emissions and support sustainable communities in the North Central Texas region. For the 2009 program, the RTC allocated surplus regional toll revenues totaling \$44.8 million to go toward the transportation projects. The Town submitted an application to participate in the program for its Vitruvian Park Trail infrastructure project, and was awarded a portion of the regional toll revenues in the amount of \$2,937,600, representing 80% of the total project cost. The Town's 20% match is \$734,400. The attached Funding Agreement is required in order to secure the funding for the project.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

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

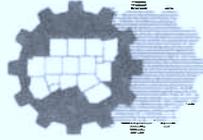
ATTACHMENTS:

Description:

- [Letter and Final Funding Agreement](#)
- [Vitruvian Funding Chart](#)

Type:

- Backup Material
- Backup Material



North Central Texas Council Of Governments

December 7, 2010

Ms. Nancy Cline
Director of Public Works
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010

Dear Ms. Cline:

Attached for your review and signature is an electronic copy of the proposed Funding Agreement between the Texas Department of Transportation, the North Central Texas Council of Governments (NCTCOG) and the Town of Addison for the Vitruvian Park Trail Sustainable Development Infrastructure Project.

NCTCOG requests your assistance in securing appropriate signatures. Please print to 8.5x11 plain white paper three copies of the signature page of the Agreement. Following signature, please return original hard copies of the signature pages to the attention of Therese Bergeon for further processing. A complete and fully executed copy of the Agreement will be returned for your files, electronically and in hard copy form. The Town of Addison is not authorized to incur any charges on this project until NCTCOG issues a Notice to Proceed.

NCTCOG looks forward to working with the Town of Addison on this project. If you have any project related questions, please contact Staron Faucher, Transportation Planner II, at (817) 704-2505. If you have any agreement related questions, please contact Jessica Lazo, Grants and Contracts Coordinator I, at (817) 704-5601.

Sincerely,


for Dan Kessler
Assistant Director of Transportation

EB:jh
Enclosures

cc: Karla Weaver, AICP, Principal Transportation Planner, NCTCOG
Patrick Mandapaka, NCTCOG
Town of Addison Project File (2009-2010)

CSJ: _____
Project Name: Vitruvian Park Trail Sustainable
Development Infrastructure Project
District #18-Dallas
Code Chart 64# 00200
Funding Category: RTR (SH 121 Subaccount
Funds)

**FUNDING AGREEMENT
FOR PROJECTS USING FUNDS HELD IN THE
STATE HIGHWAY 121 SUBACCOUNT-
SUSTIANABLE DEVELOPMENT INFRASTRUCTURE
Off-System Projects**

This Funding Agreement, hereinafter referred to as the "Agreement", is made and entered into by and between the State of Texas, hereinafter referred to as the "STATE", the Town of Addison, hereinafter referred to as the "LOCAL GOVERNMENT", and the North Central Texas Council of Governments, hereinafter referred to as "NCTCOG". The STATE, LOCAL GOVERNMENT, and NCTCOG may each be referred to as a "Party", and may be collectively referred to as "Parties" to this Agreement.

WITNESSETH

WHEREAS, the STATE has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County; and,

WHEREAS, pursuant to Transportation Code, 228.006 the STATE shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code §228.012 the STATE has created a separate subaccount in the state highway fund to hold such money (SH 121 Subaccount), and the STATE shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization; and,

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Department of Transportation Commission (the "Commission") approved a memorandum of understanding (MOU) with the Regional Transportation Council concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and,

WHEREAS, on June 3, 2010 the Regional Transportation Council (RTC) approved staff recommendations for selected projects for implementation of the Sustainable Development Program in the Dallas-Fort Worth Metropolitan Area for the implementation of transportation improvements related to sustainable development projects and local sustainable development planning programs; and,

CSJ: _____
Project Name: Vitruvian Park Trail Sustainable
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Code Chart 64# 00200
Funding Category: RTR (SH 121 Subaccount
Funds)

WHEREAS, in Minute Order _____, dated _____, the Commission concurred with RTC's selection of projects for the Sustainable Development Program; and,

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has been designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law and acts as RTC's fiduciary agent; and, WHEREAS, the Government Code, Chapter 791, and Transportation Code §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and,

WHEREAS, the Local Government is a political subdivision and governmental entity by statutory definition; and,

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1.0 Purpose. The purpose of this Agreement is to set out the roles and responsibilities of the STATE, LOCAL GOVERNMENT, and NCTCOG to implement the Sustainable Development PROJECT.

- 1.1 The STATE agrees to provide funding for the PROJECT awarded by the RTC and concurred by the Commission; on the terms and conditions set forth herein.
- 1.2 The LOCAL GOVERNMENT agrees to implement the PROJECT and provide necessary local match, according to the terms and conditions set forth herein.
- 1.3 The NCTCOG agrees to coordinate with the STATE and LOCAL GOVERNMENT on the implementation of the PROJECT, including reviewing eligible costs and recommending to the STATE payment of such costs, if consistent with the terms and conditions set forth herein.

Article 2.0 Definitions. For the purpose of this Agreement the following words and phrases shall be defined as follows:

CALL FOR PROJECTS: shall mean the request for Sustainable Development Project applications issued by the RTC on March 23, 2009.

OVERALL PROJECT: shall mean the entire project as applied for in the Call for Projects, including the funded portion of the PROJECT and any additional improvements funded by the City or a private sector through local sources. Evidence of significant progress toward completion of the OVERALL PROJECT shall be demonstrated by the LOCAL GOVERNMENT submitting a building permit for a mixed-use development.

CSJ: _____
Project Name: Vitruvian Park Trail Sustainable
Development Infrastructure Project
District #18-Dallas
Code Chart 64# 00200
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PROJECT: shall mean the project as funded under this Agreement and as further defined by the map included as Appendix A and the scope of work included as Appendix B.

PROJECT BUDGET: shall mean the budget or cost identifying all costs associated with and for the implementation of the PROJECT included in Appendix B.

Article 3.0 Scope. The LOCAL GOVERNMENT shall implement the PROJECT as described in Appendix B and in the Supporting Documentation as provided for in Article 11.1. Failure to complete the PROJECT may require the LOCAL GOVERNMENT to return funds received from the STATE for any expenses previously reimbursed within thirty (30) days. Any cost overruns are the responsibility of the LOCAL GOVERNMENT. Any modifications to the scope of work must be agreed to in advance and in writing by NCTCOG.

Article 4.0 Project Award. The PROJECT award for this Agreement is \$3,672,000. The LOCAL GOVERNMENT agrees to return funds received under this Agreement for reimbursed activities where the LOCAL GOVERNMENT has failed to comply with the requirements set forth in this Agreement, including but not limited to: failure to complete the PROJECT as identified in Appendix B, failure to show significant progress toward completion of the OVERALL PROJECT, and/or failure to comply with reporting requirements prescribed in Article 11.

4.1 Match. The LOCAL GOVERNMENT shall be responsible for a local match of \$734,400. The LOCAL GOVERNMENT shall document local match contribution in its requests for reimbursement. The LOCAL GOVERNMENT's contribution must be considered eligible expenses under this Agreement in order to constitute local match.

Article 5.0 Notices. All notices to each party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

STATE:

Texas Department of Transportation
Attention: Director of Contract Services
General Services Division
125 East 11th Street
Austin, Texas 78701
T: (214) 320-6100
F: (214) 320-4488

LOCAL GOVERNMENT:

Town of Addison
Attention: Director of Public Works
16801 Westgrove Drive

CSJ: _____
Project Name: Vitruvian Park Trail Sustainable
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District #18-Dallas
Code Chart 64# 00200
Funding Category: RTR (SH 121 Subaccount
Funds)

Addison, Texas 75001-9010
T: (972) 450-2878
F: (972) 450-2871

NCTCOG:

North Central Texas Council of Governments
Attention: Director of Transportation
616 Six Flags Drive
P.O. Box 5888
Arlington, Texas 76005
T: (817) 695-9240
F: (817) 640-3028

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Each party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 6.0 Term.

6.1 Agreement Time. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

6.2 Time of Performance. The LOCAL GOVERNMENT shall not commence performance of any portion of the PROJECT, nor incur any costs or obligations associated with those services, until the LOCAL GOVERNMENT has received written authorization from NCTCOG, in the form of a pre-award authorization or a notice to proceed.

6.3 Pre-Award Authorization. The LOCAL GOVERNMENT may obtain a pre-award authorization for approved cost not to exceed the twenty (20) percent local match contribution for the PROJECT. The costs incurred by the LOCAL GOVERNMENT prior to the execution of this Agreement may count towards the twenty (20) percent local match contribution provided such costs are for eligible expenses. Documentation of such expenditures must be provided to NCTCOG.

Costs incurred prior to execution of an Agreement are at the risk of the LOCAL GOVERNMENT and is not the responsibility of NCTCOG or the STATE to reimburse in the event an Agreement is not executed and/or the PROJECT is not completed as defined in Article 3.0.

NCTCOG will provide a copy of all pre-award authorization to the Dallas District Engineer.

CSJ: _____
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6.4 Limited/Full Notice to Proceed. A limited or full Notice to Proceed will be issued upon completion of a design and/or project review meeting, final execution of the Agreement, and necessary Article 11.1 documentation. Any activities completed prior to the receipt of a Notice to Proceed will not be eligible for reimbursement, unless specifically approved in writing by the STATE or NCTCOG.

NCTCOG will provide a copies of all limited/full Notice Proceed to the Dallas District Engineer.

6.5 Project Schedule. NCTCOG may in its sole discretion terminate this Agreement if it concludes that the LOCAL GOVERNMENT has failed to begin the PROJECT by March 2013 or has not made significant progress towards the OVERALL PROJECT within the timeline identified in the Article 11.1 supporting documentation or by December 31, 2015, whichever occurs sooner. All changes to the schedule must be agreed to in writing by all three parties.

6.6 Agreement Term. This Agreement shall terminate at the completion of the OVERALL PROJECT. The PROJECT shall be considered complete upon NCTCOG's receipt of a Closeout Report as identified in Article 11.3.

6.7 Continuing Obligations. Termination of this Agreement does not invalidate any continuing obligations imposed by this Agreement.

6.8 Funding Availability. Any or all of the terms of this Agreement may be suspended or terminated in the event the STATE terminates funding for any reason.

6.9 Events of Default. In the event of a default of any terms or conditions set forth in this Agreement, The LOCAL GOVERNMENT shall repay any funds received from the STATE for implementation of this PROJECT within thirty (30) days. The LOCAL GOVERNMENT will be considered to be in default including but not limited to the following reasons: any material representation or warranty provided in reports or as part of this Agreement shall prove to be false, funds identified in the PROEJCT BUDGET are used for purposes other than those stated in Appendix B, the LOCAL GOVERNMENT assigns or transfers the obligations set forth in this Agreement to a third party without prior written consent of the STATE and NCTCOG; the LOCAL GOVERNMENT fails to complete the PROJECT as required in Appendix B, or the LOCAL GOVERNMENT fails to cure a defect as outlined in Article 6.9.

6.10 Termination. Each party reserves the right to terminate this Agreement in whole or in part. Notice of termination must be provided in writing, shall set forth the reasons for termination, and shall provide for a minimum of forty-five (45) days to cure the defect. Termination is effective only in the event the party fails to cure the defect within the

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period stated in the termination notice including any written extensions. The Parties may terminate this Agreement at any time by mutual written concurrence.

Article 7.0 Amendments.

7.1 Sole Agreement. The Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreements' subject matter.

The LOCAL GOVERNMENT shall include all appropriate provisions of this Agreement in any subcontractor or developer awards to implement the Scope of work, including but not limited to Articles 9, 10, 11, and 12.

7.2 Severability. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

7.3 Changed Circumstances. If future federal, State, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the Parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this Agreement.

7.4 Amendments to Agreement. Modifications to this Agreement must be agreed to in writing.

Article 8.0 Rights.

8.1 Authority. The LOCAL GOVERNMENT shall have no authority to act for or on behalf of the STATE or NCTCOG. No other authority, power, use, or joint enterprise is granted or implied. The LOCAL GOVERNMENT may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the STATE or NCTCOG.

8.2 Assignment. Without the prior written consent of the STATE or NCTCOG, the LOCAL GOVERNMENT may not transfer or assign any rights or duties under or any interest in this Agreement.

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8.3 Access. The LOCAL GOVERNMENT shall permit the STATE and/or NCTCOG, and their designee's access to the property at reasonable times during the time of performance. NCTCOG will notify the LOCAL GOVERNMENT of a desire to access the property and arrangements will be made as needed.

8.4 Right of Way. Except for right of way owned by the STATE or to be acquired by the STATE according to the plans of the project as approved by the STATE, the LOCAL GOVERNMENT shall acquire all necessary right of way needed for the PROJECT. Right of Way acquisition is an eligible cost for reimbursement provided such cost is approved as shown in Appendix B.

8.5 Maintenance. The LOCAL GOVERNMENT agrees to construct, own (or secure appropriate perpetual easement to protect the project from future activities of landowners), operate (as applicable), and maintain all facilities developed or improved pursuant to this Agreement. The STATE and NCTCOG shall in no way be responsible for the maintenance of the PROJECT.

Article 9.0 Audits or Evaluations.

9.1 The LOCAL GOVERNMENT shall provide to the STATE and NCTCOG, for its review, a copy of any audit received as a result of LOCAL GOVERNMENT policy or audits of federal and state governments relating to the expenditure of grant funds. Such audits shall include or be accompanied by any applicable audit management letter issued and applicable responses to the auditor's findings and recommendations. All audits shall be submitted to the STATE and NCTCOG within thirty (30) days of receipt of each issued report.

9.2 The STATE and NCTCOG reserves the right to conduct financial and program monitoring of all awards to the LOCAL GOVERNMENT and to perform an audit of all records, related to this Agreement including but not limited to: contractor, developer, and/or other consultant Agreements related to the PROJECT. An audit by NCTCOG may encompass an examination of all financial transactions, all accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.

9.3 STATE Audit. Within one hundred and twenty (120) days of completion of the PROJECT, the LOCAL GOVERNMENT shall perform an audit on PROJECT costs. Any funds due to STATE will be promptly paid by the LOCAL GOVERNMENT.

The state auditor may conduct an audit or investigation of any entity receiving funds from the STATE directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or

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investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 10.0 Payments.

10.1 Conditions of Reimbursement. At regular milestones, but not more frequently than monthly, the STATE shall reimburse the LOCAL GOVERNMENT for eligible cost related to the PROJECT up to eighty (80) percent or \$2,937,600 after review and recommendation from NCTCOG. The LOCAL GOVERNMENT shall provide reimbursement request to the NCTCOG for costs and expenses incurred in connection with the PROJECT. Each reimbursement request shall include:

- an invoice from the LOCAL GOVERNMENT detailing cost incurred
- progress reports
- copies of contractor and supplier invoices who support the PROJECT
- proof of payment to contractors and suppliers who support the PROJECT
- certification of activities as provided for in Article 10.2
- other documentation requested by NCTCOG

NCTCOG may deem a request for reimbursement incomplete if the data and/or documentation are incomplete or improper or if the LOCAL GOVERNMENT fails to submit necessary reports or provide other information requested by NCTCOG or the STATE under the terms of this Agreement. The NCTCOG may reject request for reimbursements which fail to demonstrate that costs are eligible for reimbursement and/or which fail to conform to the requirements of this Agreement.

Final reimbursement shall not be made until the LOCAL GOVERNMENT provides a Closeout report for PROJECT activities as defined in Article 11.3 of this Agreement.

10.2 Certifications. The LOCAL GOVERNMENT shall implement the PROJECT using the LOCAL GOVERNMENT's established design standards, construction specifications, procurement processes, and construction management and inspection procedures. As part of any reimbursement request, the LOCAL GOVERNMENT shall certify to the STATE and NCTCOG the project has followed all standards and procedures previously established by the LOCAL GOVERNMENT's governing body. Upon request, the LOCAL GOVERNMENT shall make available documentation to support performance reports including but not limited to: insurance certificates, performance or payment bonds, required licenses and permits, and reports submitted by contractors and/or the Developer(s).

10.3 Retainage. The LOCAL GOVERNMENT shall receive reimbursement from the STATE in the amount of costs claimed and certified on each invoice, subject to approval of claimed costs by NCTCOG less ten (10) percent retainage up to \$367,200.

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10.4 Ineligible Expenses. Funds obligated under this Agreement shall only be used for construction aspects of the PROJECT. The LOCAL GOVERNMENT will not be reimbursed for ineligible expenses which include but are not limited to: construction or rehabilitation of private buildings, artwork, fountains, installation and/or rehabilitation and/or relocation of water and sewer lines, burying and/or relocating utilities, parking garages, local roads that provide no connection to the main transportation network, earthwork necessary to raise proposed buildings out of the floodplain, roadway reconstruction, and other items not directly related to mobility. Expenditures such as staffing, maintenance of improvements, design and/or construction management fees, legal fees, permitting, platting, travel, vehicles, lobbying, land acquisition unassociated with transportation improvements and/or land acquisition of condemned properties, advertising, billboards, consumables, and any other non-construction activities inconsistent with the intent of the Sustainable Development program are not eligible.

10.5 Eligible Expenses. Costs must be determined to be the reasonable, necessary, actual, and eligible costs of conducting an approved activity in accordance with the PROJECT to be eligible for reimbursement as provided for in the approved in the Article 11.1 Supporting Documentation.

10.6 STATE Reimbursement. Reimbursement of expenditures related to this Agreement may begin no earlier than thirty (30) days after execution of this Agreement. The STATE will reimburse the LOCAL GOVERNMENT for expenditures in RTC approved cost categories, as detailed in Appendix B, upon review and recommendation by NCTCOG to the STATE that expenditures are eligible and necessary. The STATE shall pay the LOCAL GOVERNMENT within thirty (30) days of receiving NCTCOG's payment recommendation.

10.7 Cost Overruns. The LOCAL GOVERNMENT agrees to keep project cost within the approved PROJECT BUDGET and shall not be eligible for reimbursement of any cost overruns. Cost overruns are the sole responsibility of the LOCAL GOVERNMENT. The STATE and/or NCTCOG are not responsible for any costs other than as outlined herein.

10.8 Cost Underruns. Cost underruns may not be used for additional Scope activities without prior written consent of NCTCOG.

10.9 Availability of Funds. This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the receipt and availability of funding. If funding is not available due to a default, this Agreement shall terminate.

Article 11.0 Reporting Requirements. All reports identified in this section shall be provided to NCTCOG in a format approved by NCTCOG.

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11.1 The LOCAL GOVERNMENT shall provide a list of Supporting Documentation for the PROJECT and OVERALL PROJECT at agreed upon Phases throughout the PROJECT. The Phases provided for and approved by NCTCOG in this document will determine the milestones at which the LOCAL GOVERNMENT will receive reimbursement and items eligible for reimbursement. This Supporting Documentation shall be received prior to issuance of a Pre-Award Authorization or a Notice to Proceed and at a minimum should include:

- supporting schedules
- project description
- project budget/reimbursable items
- site plans and parcel maps
- appraisal data
- infrastructure improvement illustrations
- details of right of way to be acquired, each with parcel information, photos, and maps (if applicable)
- project photos, each with directional notations
- private development phasing, acreage, and units

11.2 Milestone and Invoice Reporting. The LOCAL GOVERNMENT shall provide written progress reports of its actions under this Agreement at milestones as agreed upon in the Supporting Documentation identified in Article 11.1. Each progress report shall at a minimum include:

- any actions relative to the PROJECT during the current phase
- percentage of work complete
- activities of work complete
- all approved project modifications
- updated photos, each with directional notations
- identification of work delays
- actions taken to mitigate delays
- status of the schedule and budget

Milestone reports shall be included with each invoice submittal and sent to NCTCOG.

11.3 Closeout Report. The LOCAL GOVERNMENT shall prepare a closeout report to document actual project costs, final program activities of the PROJECT, and documentation of significant progress towards OVERALL PROJECT completion by evidence of a building permit or other approved document, to NCTCOG. This report shall be provided to NCTCOG no later than sixty (60) days from the completion of the PROJECT. Payment of the retainage is contingent upon completion of the closeout report.

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11.4 OVERALL PROJECT Closeout. The LOCAL GOVERNMENT shall prepare a status report to update activities on the OVERALL PROJECT no later than three (3) years after execution of this Agreement.

12.0 Assurances.

12.1 Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12.2 Noncollusion. The LOCAL GOVERNMENT warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. If the LOCAL GOVERNMENT breaches or violates this warranty, the STATE and/or NCTCOG shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

12.3 Debarment/Suspension. The LOCAL GOVERNMENT is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The LOCAL GOVERNMENT and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

The LOCAL GOVERNMENT shall notify NCTCOG if the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the LOCAL GOVERNMENT or any of the LOCAL GOVERNMENT's contractors may result in immediate termination of this Agreement.

12.4 Restrictions on Lobbying. The LOCAL GOVERNMENT is prohibited from using funds awarded under this Agreement for lobbying purposes. The LOCAL GOVERNMENT shall include a statement of compliance with this provision in applicable procurement solicitations and Third-Party contracts.

12.5 Disadvantaged Business Enterprise. It is the policy of the STATE and NCTCOG to maximize opportunities for Disadvantaged Business Enterprises to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The LOCAL GOVERNMENT agrees to ensure that DBE's have the maximum opportunity to participate in the performance of contracts and subcontracts

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financed in whole or in part with federal funds under this Agreement. Upon request, the LOCAL GOVERNMENT shall report DBE participation.

12.6 Compliance with Regulations- Environmental Review and Public Involvement.

Each party shall comply with all federal, state, and local laws, statues, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. The LOCAL GOVERNMENT shall ensure that the PROJECT complies with all environmental review and public involvement requirements applicable to the LOCAL GOVERNMENT under state and federal law in connection with the PROJECT. The LOCAL GOVERNMENT shall obtain the opinion of legal counsel showing the LOCAL GOVERNMENT's environmental review and public involvement for the PROJECT complies with state law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT shall maintain a copy of the certification in the project files. When required, the LOCAL GOVERNMENT shall furnish the STATE and NCTCOG with satisfactory proof of compliance.

Article 13.0 Miscellaneous Provisions.

13.1 Responsibilities of Parties.

a. The STATE, LOCAL GOVERNMENT, and NCTCOG agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

b. To the extent permitted by law, the LOCAL GOVERNMENT agrees to indemnify and save harmless the STATE and NCTCOG, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the PROJECT by the LOCAL GOVERNMENT, its contract(s), subcontract(s), agents and employees, and from any claims or amounts arising or recovered under the "Worker's Compensation laws"; the Texas tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.

c. The Parties expressly agree that the PROJECT is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the LOCAL GOVERNMENT, to the extent provided by law, agrees to pay any liability adjudicated against the STATE for acts and deeds of the LOCAL GOVERNMENT, its employees or agents during the performance of the PROJECT.

d. To the extent provided by law, the LOCAL GOVERNMENT shall also indemnify and save harmless the STATE and NCTCOG from any and all expenses, including, but not limited to, attorney's fees which may be incurred by the STATE in litigation or otherwise resisting said claim or liabilities which may be imposed on the

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STATE as a result of such activities by the LOCAL GOVERNMENT, its agents, or employees.

13.2 Force Majeure. It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within reasonable time of the existence of such force majeure.

13.3 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership of joint venture or agency relationship between the parties. Nor shall any party be liable for any debts incurred by the other party in the conduct of such other party's business or functions.

13.4 Insurance. If this Agreement authorizes the LOCAL GOVERNMENT or its contractors to perform any work on State right of way, before beginning work the entity performing the work shall provide the STATE with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

13.5 Procurement and Contracting Process. The STATE and NCTCOG may review the LOCAL GOVERNMENT's procurement of professional services for professional services for engineering, surveying, right of way acquisition, letting of construction contracts, and construction management and inspection. The LOCAL GOVERNMENT shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. Copies of these certifications must be maintained in the PROJECT files and made available upon request.

13.6 Utilities. The LOCAL GOVERNMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures application to the LOCAL GOVERNMENT. The LOCAL GOVERNMENT must obtain advance approval for any

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variance from established procedures. This Agreement may not cover cost associated with utility relocation, if any reimbursement is deemed eligible the utility must have a property right as shown in a recorded deed or easement.

13.7 Disputes and Remedies. The LOCAL GOVERNMENT and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement. The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either party and are cumulative.

13.8 Records and Project Documents. The LOCAL GOVERNMENT shall maintain a record keeping system for all of its activities, including program records and financial management records, which support and document all expenditures of funds made under this Agreement, in accordance with federal regulations, state rules, and the Multi-Party Cooperative Agreement. This section shall not be interpreted to require maintenance of multiple exact duplicate copies of any record or document.

All records must be maintained for a minimum of three (3) years after PROJECT closeout. In the event that any litigation or claim is still pending before the expiration of the three-year period, these records shall be retained until resolution of the litigation or claim. NCTCOG, STATE, and their duly authorized agents shall have reasonable access to all records that are directly applicable to this Agreement for the purpose of making audit(s) examinations.

Upon completion or termination of this Agreement, all documents prepared by the STATE shall remain the property of the STATE. All data prepared under this Agreement by the LOCAL GOVERNMENT shall be made available to the STATE and NCTCOG without restriction or limitation on their further use. All documents produced or approved or otherwise created by the LOCAL GOVERNMENT shall be transmitted to the STATE in the form of photocopy reproduction as required by the STATE. The originals shall remain the property of the LOCAL GOVERNMENT. At the request of the STATE or NCTCOG, the LOCAL GOVERNMENT shall submit any information required by the STATE or NCTCOG in the format directed by the STATE or NCTCOG.

13.9 Confidentiality. The LOCAL GOVERNMENT, NCTCOG, and the STATE shall ensure that all information, both written and verbal, deemed confidential by law that is obtained through implementation of the PROJECT will remain confidential, subject to the Texas Public Information Act.

13.10 Gratuities. Any person doing business with or who, reasonably speaking, may do business with NCTCOG under this Agreement, may not make any offer of benefits, gifts or favors to employees of NCTCOG. Failure on the part of the LOCAL GOVERNMENT to adhere to this policy may result in termination of this Agreement.

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13.11 Equal Employment Opportunity. The LOCAL GOVERNMENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The LOCAL GOVERNMENT shall take affirmative action's to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

13.12 Nondiscrimination on the Basis of Disability. The LOCAL GOVERNMENT agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The LOCAL GOVERNMENT shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR, Part 27 and any amendments thereto.

13.13 Title VI. The LOCAL GOVERNMENT shall work cooperatively with NCTCOG to implement appropriate PROJECT activities to address environmental justice in minority and low-income populations, and to address needs from persons with limited English proficiency.

13.14 Drug Free Workplace. The LOCAL GOVERNMENT shall establish a drug-free workplace in accordance with the Drug-Free Workplace Act.

13.15 Compliance with Texas Accessibility Standards and ADA. The LOCAL GOVERNMENT shall ensure the plans for and the construction of the PROJECT is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes.

13.16 Signatory Warranty. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party they represent.

Attachments

The following appendices are attached and made part of this Agreement.

- A. Project Location Map
- B. Scope of Work and Payment Provisions

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IN WITNESS HEREOF, the parties have executed this Agreement in duplicate original on the _____ day of _____, 20____.

The LOCAL GOVERNMENT

Town of Addison

By _____ Date _____
Ron Whitehead
City Manager

The NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

By _____ Date _____
Mike Eastland
Executive Director

The STATE

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

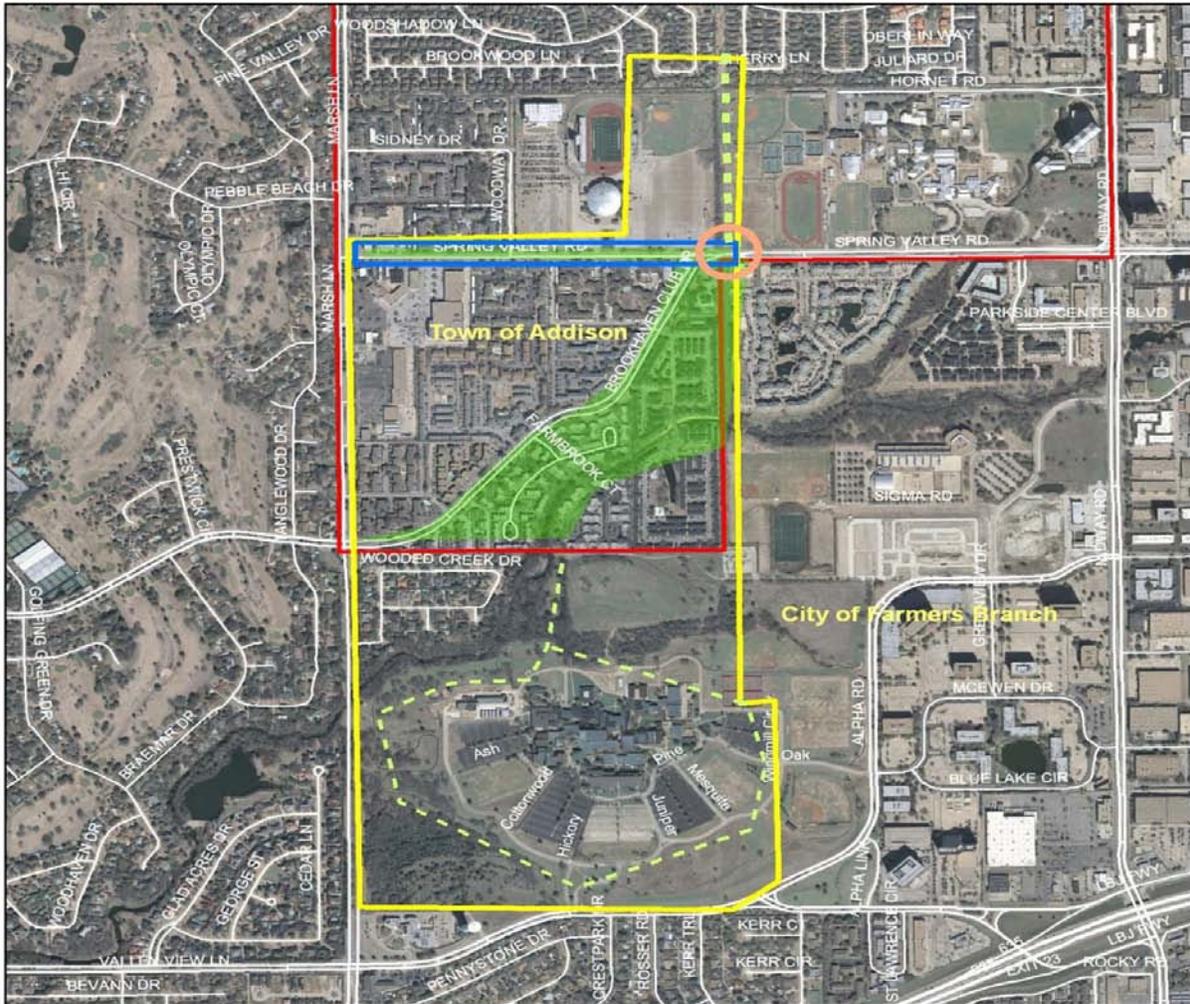
By _____ Date _____
Janice Mullinex
Director of Contract Services
Texas Department of Transportation

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Attachment A

Project Map

Town of Addison - Vitruvian Trail Infrastructure



Legend		
Town of Addison Limits	Trail Connections	 0 0.125 0.25 0.5 Miles North Central Texas Council of Governments Transportation Department http://www.nctcog.org/trans/
Project Boundary		
Street Construction		
Intersection Improvements		
Pedestrian Amenities		
Map Produced on: 12/02/2010		

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ATTACHMENT B

SCOPE OF WORK AND PROJECT BUDGET

The STATE will pay **\$2,937,600** from the SH 121 Subaccount for The Town of Addison's Vitruvian Park Trail Sustainable Development Infrastructure Project to construct pedestrian amenities, landscaping, bike connection, traffic signalization, and street construction to support the Vitruvian Park mixed use development. The project area is bounded one mile north of Spring Valley Road on the north, Marsh Lane on the west, Town of Addison Limits on the east, Brook Haven College on the south. The deliverables of the project include design and construction of pedestrian amenities, landscaping, bike connection, traffic signalization, and widening a 4-lane undivided to a 4-lane divided with pedestrian amenities on Spring Valley Road from Woodway to Vitruvian Way.

"In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work 30 days after recommendation from NCTCOG, but not prior to the Fiscal Years shown:"

RIGHT OF WAY AND CONSTRUCTION COSTS						
Description	Fiscal Year	Total Estimate Cost	Regional Toll Revenue (RTR) SH 121 Subaccount Funds Participation		Local Government Participation	
			0%	\$0.00	0%	\$0.00
Right of Way	2011	\$0.00	0%	\$0.00	0%	\$0.00
Engineering (Design capped at 10%)	2011	\$132,000	0%	\$0.00	3.6%	\$132,000
Construction	2011	\$3,540,000	80%	\$2,937,600	16.4%	\$602,400
TOTAL		\$3,672,000	80%	\$2,937,600	20%	\$734,400

The LOCAL GOVERNMENT shall be responsible for a required local match of **\$734,400.**

Upon completion of the PROJECT, the NCTCOG will issue a signed "Notification of Completion" document to the STATE. The notice shall certify that the PROJECT has been completed, all necessary inspections have been conducted, and the PROJECT is open to traffic.

This is an estimate only; final participation amounts will be based on actual charges to the project.

Funding for Vitruvian Area Improvements 08-25-2010 (revised 12-7-2010)						
Project	Est Cost	Source for funding	Amt. Funded	Incl Local	Status	Manager
Redding Trail	\$ 456,224.00	Dallas County Sustainable Devel Grant	\$ 106,224.00 \$ 350,000.00	\$ 350,000.00	allocated anticipated	Slade
DJSD Campus	\$ 372,647.00	ParksCapital Project funds DISD	\$ 131,326.00 \$ 241,321.00		in hand in hand	Slade
Spring Valley Road Improvements	\$ 3,324,982.77	Crimson Tide bond funds Sustainable Devel Grant	\$ 1,500,000.00 \$ 617,600.00	\$ 1,117,600.00	in hand anticipated	Nancy
		DISD	\$ 957,382.77		in hand	
		UDR**	\$ 150,000.00		in hand	
		Dallas County	\$ 100,000.00		in hand	
Vitruvian Way Extension	\$ 1,301,000.00	Vitruvian Bond Funds	\$ 1,301,000.00		in hand	Clay
Bella Lane Construction	\$ 1,475,000.00	Vitruvian Bond Funds	\$ 1,475,000.00		in hand	Clay
Vitruvian Park and Vitruvian Park Bridges	\$ 16,334,000.00	Vitruvian Bond Funds	\$ 11,964,000.00		in hand	Clay
		UDR	\$ 1,800,000.00		in hand	
		Dallas County	\$ 1,700,000.00		in hand	
		Sustainable Devel Grant	\$ 870,000.00	\$ 1,004,400.00	anticipated	
Bicycle Trail loop around Brookhaven	\$ 1,100,000.00	Sustainable Devel Grant	\$ 850,000.00	\$ 950,000.00	anticipated	Dallas County
		Dallas County	\$ 250,000.00		anticipated	
Brookhaven connection to Rosser Road	\$ 250,000.00	Sustainable Devel Grant	\$ 250,000.00	\$ 250,000.00		
Totals	\$ 24,613,853.77		\$ 24,613,853.77			
** UDR dedicated right-of-way for the Spring Valley Road Project in addition to \$150,000						

Funds Allocated by Source
Town Bond Funds \$ 18,182,138.00
Dallas County \$ 2,156,224.00
DISD \$ 1,198,703.77
Sustainable Dev. Grant \$ 2,937,600.00

Summary of Funding and Sources for Vitruvian Area Improvements 06-24-2010

Town of Addison	
Vitruvian Park Bond funds	\$ 15,060,000.00 Phase 1 funding for major components, does not include completed work
	\$ 700,000.00 Town's match for sustainable development grant from NCTCOG
Crimson Tide Bond funds *	\$ 900,000.00 Spent to date. Court award of \$751,000 plus attorneys fees and environmental costs. Final cost not yet known
	\$ 1,200,000.00 allocated to Spring Valley intersection improvements
Parks Capital Project Bond funds	\$ 292,000.00 remaining in fund balance for this account
Total Town of Addison Bond funds	\$ 18,152,000.00 includes funds from all bond sources
Sustainable Development Grant Funds	\$ 2,900,000.00 should become available after October 1, 2010
Dallas County	\$ 2,250,000.00 includes committed and anticipated
UDR	\$ 1,950,000.00 all funds committed
DISD	\$ 1,210,000.00 all funds committed
Texas Parks and Wildlife Grant	\$ 168,000.00 decision will be made in August, 2010
Total	\$ 26,630,000.00

*Crimson Tide Bond funds were part of a 2-item bond sale. Other item was Addison Road, which has an approximate remaining balance of \$2,000,000.00

Council Agenda Item: #R11

AGENDA CAPTION:

Presentation, discussion and consideration of approval of the Town's consent to assignment of an option contract from Twin City Hotels, LLC to Praveen Katapally and/or assigns regarding an option to lease the property located at 4460 Belt Line Road (Clay Pit Restaurant).

FINANCIAL IMPACT:

BACKGROUND:

At the November 23, 2010 Council meeting, the City Council approved an assignment of the existing lease of the property at 4460 Beltline Road (the Clay Pit Restaurant site) from Twin City Hotels, LLC to Praveen Katapally and/or assigns, subject to the City Manager's and City Attorney's review and approval. During that meeting, it was discussed that, when the original owner of the Clay Pit, Amar Unlimited, entered into the lease as tenant in or about 2002, the Town and Amar entered into an Option Contract that granted Amar an option to enter into a new lease when the current one ends (at the end of 2012).

In November, 2007 Amar assigned its interest in the current lease to Twin City Hotels, LLC, but did not at that time assign its interest in the Option Contract. The proposed new tenant, Praveen Katapally and/or assigns, would like to receive the benefits of the Option Contract. Therefore, a consent to assignment of the Option Contract from Twin City to Praveen Katapally and/or assigns has been prepared and is attached. This document recognizes that there was not an assignment of the Option Contract from Amar to Twin City, but provides that the Town will treat the matter as if the Option Contract had been assigned to Twin City.

The attached document also includes amendments to the Option Contract (see section 3). A copy of the original Option Contract (with only Exhibit 1) is also attached.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

- [Consent to Assignment of Option Contract and Amendment to Option Contract](#)
- [Exhibit 1 to Consent to Assignment](#)
- [Option Contract](#)

Type:

Backup Material

Backup Material

Backup Material

**LANDLORD’S CONSENT TO ASSIGNMENT OF OPTION CONTRACT
AND AMENDMENT OF OPTION CONTRACT**

PROPERTY: Generally described as 4460 Belt Line Road, Addison, Texas 75001 (and as otherwise described herein)

LANDLORD: Town of Addison, Texas
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254

TENANT/ASSIGNOR: TWIN CITY HOTELS, LLC a Nevada limited liability company
15891 Christopher Lane
Frisco, TX 75035-3625

ASSIGNEE: _____

Recitals:

1. The Town of Addison, Texas (sometimes referred to herein as the “Landlord” or 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, a true and correct copy of which is on file in the office of the City Secretary. The subject of the said lease is the operation of a restaurant on the Property. The said lease was thereafter amended by that Amendment to Lease made as of February 25, 2005, which amendment in part adjusted the term to provide that the lease will end (subject to its earlier termination) on December 31, 2012 (the said lease, as amended, being the “Lease”).

3. On or about August 21, 2002 and arising out of a bankruptcy proceeding filed by Prufrock’s successor, Phoenix Restaurant Group, Inc. (“PRG”), the interests and obligations of PRG in the Lease were assigned and assumed by Amar Unlimited, Inc. (“Amar”). In connection therewith, the City and Amar entered into an Option Contract that granted to Amar the exclusive right and option to enter into a new lease of the Property following the end of the Current Lease (the “Option Contract”) (a true and correct copy of which is on file in office of the City Secretary, and despite such copy being signed only by the City Manager, the City accepts and recognizes the same as if it had been executed by Amar) . Attached to the Option Contract as Exhibit 2 is a form of lease agreement (the “Option Lease”), to be executed substantially in the form of the said Exhibit 2 (as amended by this Agreement) upon the exercise of the option in accordance with the Option Contract. The Option Lease has a commencement date of January 1, 2013.

4. On or about November 2, 2007 Amar assigned its interest (including its rights, duties and obligations) as the tenant in the Current Lease to Twin City Hotels, LLC, a Nevada

limited liability company ("Twin City"), and Twin City accepted such assignment and assumed the rights, duties and obligations of the tenant under the Lease. The City consented to the assignment. However, Amar's interest in the Option Contract was not assigned.

5. Twin City desires to assign its interest as the tenant in the Lease to _____ ("Company"), and Company desires to accept such assignment and to assume the rights, duties and obligation of the tenant under the Lease. However, in connection with that assignment, Company desires to simultaneously receive the interests of Amar under the Option Contract. In order to accommodate the transaction between Twin City and Company (and solely for that purpose), and despite there being no assignment of Amar's interest in the Option Contract to Twin City, the City agrees to treat Twin City as the holder of Amar's interest in the Option Contract, as if Amar had assigned its interest in the Option Contract to Twin City and received the City's consent to that assignment.

6. In accordance with and as required by the Option Contract, Twin City has requested the City's prior written consent to the Assignment. In connection with this Agreement and as consideration for the City's consent to the Assignment as set forth herein, the parties have agreed to amend the Option Contract as described in this Agreement, including an amendment to the form of Option Lease attached to the Option Contract as Exhibit 2 (which Option Lease, as amended, is attached to this Agreement as Exhibit 1).

NOW, THEREFORE, in recognition of the foregoing recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord agrees as follows:

1. Incorporation of Recitals. The above and foregoing recitals to this Landlord's Consent to Assignment of Option Contract and Amendment of Option Contract (the "Agreement") are true and correct and are incorporated herein and made a part hereof for all purposes.

2. Consent to Assignment. As set forth in the above Recitals, for purposes of this Agreement, the City will treat Twin City as the holder of Amar's interest in the Option Contract, as if Amar had assigned its interest in the Option Contract to Twin City and received the City's consent to that assignment. Accordingly, subject to the terms, conditions and provisions of this Agreement, and relying upon the warranty and representations made by both Twin City Hotels, LLC and Company in the Assignment of Option Contract, Landlord hereby consents to Twin City's assignment of its interest in the Option Contract to Company under the Assignment of Option Contract by and between Twin City, as assignor, and Company, as Company, dated December ____, 2010.

3. Amendment to Option Contract. The Option Contract is amended as follows:

(a) If Company conveys any of its rights, interests, duties or obligations (or any portion thereof) in the Lease without conveying its interest in the Option Contract, Company shall have no further rights in or to the Option Contract (including, without limitation, the right to exercise the option described therein); however, with the City's prior written consent, Company may assign the Option Contract to the then current tenant of the Lease.

(b) At the time of the exercise of the option, or at any time following the exercise of the option and before or simultaneously with the execution of the Option Lease, Company shall, at the Landlord's request, provide to Landlord, for the benefit and in favor of Landlord, an unconditional guaranty of payment and performance of the Option Lease by a third person or third persons who control Company. Such unconditional guaranty of payment and performance of the Option Lease shall be in form and content acceptable to Landlord in its sole discretion. Upon Landlord's request, Company shall promptly provide a certification to Landlord as to the ownership of voting securities and/or control of Tenant (and such certification, and any other certification given or required pursuant to this Agreement) shall be given under oath before a person authorized to give oaths in Texas, and be in a form acceptable to Landlord).

(c) The form of Lease Agreement attached as Exhibit 2 to the Option Contract is amended in its entirety so that it shall read substantially as set forth in Exhibit 1 to this Agreement.

(d) Company shall not, and shall have no power or authority to, assign, convey, sell, pledge, or otherwise transfer (together, "transfer"), in any manner whatsoever (including, without limitation, by consolidation, merger, or otherwise), its interest in the Option Contract and/or this Agreement, or any right, duty or obligation in either of them, without the prior written approval of the Town. Any transfer of the Option Contract and/or this Agreement, or any right, duty or obligation in either of them, shall give Landlord the right to declare the Option Contract and this Agreement immediately null and void. The Town has the right to grant or withhold its approval of any transfer in its sole discretion.

A transfer will be deemed to occur if the person or persons who own or have control of 50% or more of Company on the Effective Date cease at any time to own or have control of 50% or more of Company. Upon Company's execution of this Agreement, Company shall give to Landlord a written certification as to the ownership of voting securities and/or control of Company as of the Effective Date. At any time thereafter, upon Landlord's request, Company shall provide a written certification to Landlord as to the ownership of voting securities and/or control of Company. In the event Company shall fail to provide Landlord with any such certification within ten (10) calendar days after Landlord's request for such certification, Landlord shall have the right, in its sole discretion, to terminate the Option Contract and this Agreement.

(e) In addition to the conditions set forth in the Option Contract (including, without limitation, Section 1.A. of the Option Contract) for Company to be able to exercise the option to the Option Contract, Company shall be entitled to exercise the option described in the Option Contract only if, at the time of the exercise of the option, Company is not then in violation or default of any provision of the Option Contract or this Agreement.

(f) 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 Landlord:

To Company:

5300 Belt Line Road
Dallas Texas 75240-7606
Attention: City Manager

4460 Belt Line Road
Addison, TX 75001
Attn: _____

4. No Other Amendments. Except for the amendments, modifications and revisions to the Option Contract stated herein, including, without limitation, in section 2 hereof, all other terms, provisions and representations of the Option Contract Agreement shall remain unchanged and in full force and effect. Accordingly, references to "Amar Unlimited, Inc." or "Amar" in the provisions of the Option Contract not amended by this Agreement shall be applicable to Company.

5. Delivery of Other Documents. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be effective unless and until Company has delivered to Landlord fully executed copies of all documents evidencing the assignment of the Lease from Twin City to Company, and documents and instruments related thereto, including but not limited to the instrument assigning Twin City's interest in the Lease to Company, any guaranty related thereto, and the instrument assigning the lease (or the right to occupy) the building located on the Leased Premises and the consent of the owner thereto. In the event Company have not delivered such documents to Landlord and to Landlord's satisfaction on or before December 31, 2010, this Agreement shall be deemed null and void without further action of any party.

6. Recording. Company shall not record this Agreement or any memorandum of this Agreement without prior written consent of Landlord. Company agrees that it will, upon request of the Landlord, promptly execute and deliver a Memorandum of Agreement in recordable form for the purpose of giving record notice of this Agreement.

7. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized agreement of the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date.

EXECUTED this the ____ day of December, 2010 (the "Effective Date").

TOWN OF ADDISON, TEXAS

COMPANY

By: _____
Ron Whitehead, City Manager

By: _____

ATTEST:

Printed Name: _____

By: _____
Lea Dunn, City Secretary

Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2010 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.

[SEAL]

By: _____
 NOTARY PUBLIC, State of Texas

My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2010 by _____, _____ of _____, a _____, on behalf of the said _____.

[SEAL]

By: _____
 NOTARY PUBLIC, State of Texas

My commission expires: _____

EXHIBIT 1

[Attach Copy of Option Lease]

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: (none)

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, as amended.

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, 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. The Option Contract was assigned to Tenant on or about _____, 2010 (the "**Option Contract Date**").

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. 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.**

TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE LEASED PREMISES AND ACCEPTS THE LEASED PREMISES AND THAT THE LEASED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE LEASED PREMISES FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE LEASED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S

OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES, DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE LEASED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE LEASED PREMISES. TENANT WAIVES ANY IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES THAT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

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. **Exculpation, Tenant's Indemnity Obligation.**

A. *Exculpation; Assumption of Risk; Release.*

(1) The Town of Addison, Texas and all other Addison Persons (as the terms "Addison Persons" is defined in subsection B below) shall not be liable to Tenant or to any Tenant Persons (as the term "Tenant Persons" is defined in subsection B below), or to any other person, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Leased Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Person or any other person entering the Leased Premises under express or implied invitation of Tenant, or arising out of the use or occupation of the Leased Premises by Tenant or by any Tenant Person and/or the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder. However, the non-liability provided in this subsection (1) shall not apply to an event or events to the extent the gross negligence or willful misconduct of Landlord solely or substantially caused such event(s).

(2) 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.

(3) Tenant hereby RELEASES Landlord and all other Addison Persons from, and agrees that Landlord and all other Addison Persons not be liable to Tenant or any Tenant Person for (i) any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Leased Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Leased Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and for (ii) for, any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work. Notwithstanding the foregoing, the release from liability provided in this subsection (3) shall not apply to an event or events to the extent the gross negligence or willful misconduct of one or more Addison Persons solely or substantially caused such event(s).

B. TENANT'S INDEMNITY OBLIGATION. Tenant shall DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS Landlord and the elected officials, the officers, employees, representatives, agents, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (Landlord, and the elected officials, the officers, employees, representatives, agents, and volunteers of the Town of Addison, Texas, each being an "Addison Person" and collectively the "Addison Persons") from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liability, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever (including, without limitation, any claims relating to hazardous materials or environmental contamination) made upon, incurred by, suffered by, or asserted against any Addison Person, whether directly or indirectly, (collectively, "Claims"), that result from, relate to, or arise out of, in whole or in part, (i) Tenant's use of the Leased Premises (including any act or omission of Tenant in connection with the Leased Premises), (ii) 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, (iii) any breach or default in the performance of Tenant's obligations under this Lease, (iv) any condition of the Leased Premises caused in whole or in part by Tenant or by any of Tenant's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, concessionaires, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, tenants, licensees, invitees, patrons, and concessionaires (each a "Tenant Person" and collectively the "Tenant Persons"), (v) the Leased Premises becoming out of repair due to the fault of Tenant or any Tenant Person, for any reason including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Leased Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling, (vi) representations or warranties by Tenant under this Lease, and (vii) any act or omission of Tenant or any Tenant Person under, in connection with, or in the performance of, this Lease. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR

IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF LANDLORD OR ANY OTHER ADDISON PERSON, OR BY CONDUCT OF LANDLORD OR OF ANY OTHER ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Tenant shall promptly advise Landlord in writing of any claim or demand against Landlord, any Addison Person, Tenant, or any Tenant Person related to or arising out of or under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's sole cost and expense. The Addison Persons, as the case may be, shall have the right, at the Addison Persons' option and at their own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

C. The obligations under this Section (and any other defense, indemnity or hold harmless obligation of Tenant included in this Lease) shall survive the expiration or termination of this Lease Agreement.

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

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

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

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

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

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

A. Except as provided in Section 6.02, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Leased Premises (including, without limitation, structural, nonstructural, interior, systems and equipment) in good order, condition and repair (including, without limitation, interior and exterior repainting and refinishing, as needed). Tenant will not allow any exterior windows applicable to the Leased Premises to be open during any period of rain, snow or ice and Tenant will cause such windows to be closed at all times during such periods of rain, snow, or ice. Any and all damage resulting from Tenant's failure to keep such windows closed will be the responsibility of Tenant. It is the intention of Landlord and Tenant that at all times Tenant shall maintain all portions of the Leased Premises in an attractive, first-class and fully operative condition.

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

Section 6.04. **Condition upon Termination.** Upon the expiration or termination of this Lease, Tenant shall (i) surrender any keys, electronic ID cards, and other access control devices to Landlord at the place then fixed for the payment of Base Rent, and (ii) surrender the Leased Premises to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease, and free of any and all Hazardous Materials and environmental contamination. In addition, Landlord may require Tenant to remove any alterations, additions or improvements to the Leased Premises (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Leased Premises to its condition as of the time of the Effective Date or the date of the final completion of the Initial Tenant Improvements, whichever is later, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Leased Premises. Tenant shall repair, at Tenant's expense, any damage to the Leased Premises caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting

fixtures (excluding decorative lighting and decorative lighting fixtures); wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; walk-in freezer; walk-in refrigerator; ventilation systems (including that portion thereof known as a vent-a-hood); or other similar building operating equipment and decorations.

ARTICLE SEVEN: **DAMAGE OR DESTRUCTION**

Section 7.01. **Partial Damage to Leased Premises.**

A. Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Leased Premises. If the Leased Premises is only partially damaged (i.e., less than fifty percent (50%) of the Leased Premises is untenable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired) by any cause whatsoever and if the proceeds received by Landlord from the insurance policies described in Section 4.02 are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, furniture, materials, or improvements.

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

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

Section 7.02. **Substantial or Total Destruction.** Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Leased Premises. If the Leased Premises is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Leased Premises is greater than partial damage as described in Section 7.01), this Lease shall terminate as of the date the destruction occurred; provided, however, that if the Leased Premises can be rebuilt within six (6) months after the date of Landlord's receipt of insurance proceeds in

connection with and directly related to the casualty, Landlord may elect (but will not be required) to rebuild the Leased Premises at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Landlord's receipt of insurance proceeds. If Landlord so elects, Landlord shall rebuild the Leased Premises at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03. **Temporary Reduction of Rent.** If the Leased Premises is destroyed or damaged and Landlord or Tenant repairs or restores the Leased Premises pursuant to the provisions of this Article Seven, any Rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Leased Premises is impaired; provided, however, that if the damage or destruction was caused by any act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Rent shall not be reduced and Tenant shall have the continuing obligation to pay Rent in full during the period of such rebuilding or repair. Except for such possible reduction in Rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Leased Premises.

ARTICLE EIGHT: **CONDEMNATION**

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

ARTICLE NINE: ASSIGNMENT AND SUBLETTING

Section 9.01. **Landlord's Consent Required.** Without Landlord's prior written consent, 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, pledge, sublease, transfer, operation of law, act of Tenant (including, without limitation, by a merger, a consolidation, or otherwise), or any other conveyance (collectively, "convey" or a "conveyance"), and Tenant shall have no right or authority to convey in any manner whatsoever 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 Landlord's prior written 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, individually or together, own or have control of 50% or more of Tenant on the Option Contract Date cease to own or have control of 50% or more of Tenant during the Lease Term and during any renewal term. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Upon Tenant's execution of this Lease, Tenant shall give to Landlord a certification as to the ownership of voting securities and/or control of Tenant. Upon Landlord's request, Tenant shall provide a certification to Landlord as to the ownership of voting securities and/or control of Tenant (and such certification shall be given under oath before a person authorized to give oaths in Texas, and be in a form acceptable to Landlord).

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 foregoing at the Past Due Rate) to satisfy the Base Rent provided for in this Lease to be paid, plus all other sums owed by Tenant to Landlord, plus interest on all of the foregoing at the Past Due Rate, then Tenant shall satisfy and pay any such deficiency to Landlord upon demand therefor from time to time, and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this paragraph from time to time, and that no delivery or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord, nor shall such reletting be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention be given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

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

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

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

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

H. In addition to the other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation, of any of the provisions of this Lease, or to a decree compelling performance of any other provisions of this Lease, or to any other remedy allowed at law or in equity.

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

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

Landlord be barred thereafter from immediate exercise of any of Landlord's rights or remedies in case of continuing or subsequent default or violation by Tenant.

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

Section 10.04 Mitigation of Damages

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

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

1. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Leased Premises until and unless Landlord obtains full and complete possession of the Leased Premises, including without limitation, the final and unappealable legal right to relet the Leased Premises free of any claim of Tenant.
2. Landlord will not be obligated to offer the Leased Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other building which is owned by Landlord.
3. Landlord will not have any obligation to lease the Leased Premises for any rental less than the current rate then prevailing for similar space in comparable buildings in the same market area as the Leased Premises nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.
4. Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's sole judgment and opinion.
5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Leased Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Leased Premises is not a permitted use under the terms of this Lease.
6. Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Leased Premises suitable for use by any prospective tenant.
7. Landlord will have no obligation to advertise or expend any sums of money to market the Leased Premises.

If Landlord makes the Leased Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and Tenant hereby waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation

of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

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

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

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

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

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

Section 11.03. **Attornment.** If Landlord's interest in the Leased Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Leased

Premises and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Leased Premises upon the transfer of Landlord's interest.

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

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

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

ARTICLE TWELVE: LEGAL COSTS

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

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: MISCELLANEOUS PROVISIONS

Section 13.01. **Landlord's Liability; Certain Duties.** Tenant shall give written notice to Landlord of any failure by Landlord to perform any of Landlord's obligations under this Lease. Landlord shall not be in default under this Lease unless Landlord fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty-day period and thereafter diligently pursued to completion.

Section 13.02. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.03. **Interpretation; Time of Essence.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. Time is of the essence of this Agreement.

Section 13.04. **Incorporation of Prior Agreements; Modifications.** This Lease is the only (and entire) agreement between the parties pertaining to the lease of the Leased Premises and the matters set forth herein, 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. **Guaranty.** Tenant shall, from time to time as may be requested by Landlord, cause to be given to Landlord, for the benefit and in favor of Landlord, an unconditional guaranty of payment and performance of this Lease by a third person or third persons who control Tenant. Such unconditional guaranty of payment and performance of this Lease shall be in form and content acceptable to Landlord in its sole discretion. Upon Landlord's request, Tenant shall promptly provide a certification to Landlord as to the ownership of voting securities and/or control of Tenant (and such certification shall be given under oath before a person authorized to give oaths in Texas, and be in a form acceptable to Landlord).

Section 13.09. **Binding Effect; Choice of Law; Venue; Lease Subject to Laws.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or
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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 exclusively in Dallas County, Texas. The Lease shall be construed under and governed by the laws of the State of Texas, without regard to choice of law rules, and all obligations of the parties created by this Lease are performable in Dallas County, Texas.

This Agreement is subject to all applicable laws, ordinances, rules, codes, the City Charters, regulations, directives, permits, orders, or standards of any federal, state and/or local governmental or quasi-governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas).

Section 13.10. **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 Tenant.

Section 13.11. **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 13.12. **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 13.13. **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 13.14. **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 13.15. **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 13.16. **Section Headings; Certain Terms.** Article and section headings are for convenience only and shall not be used in interpretation of this Lease. The terms "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. 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.

Section 13.17. **No Third Party Beneficiaries.** This Lease and all of its provisions are solely for the benefit of the Parties hereto and, except as set forth herein, are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 13.18. **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.** Tenant and Landlord acknowledge that no 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

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 of the Renewal Term, that Tenant received from the Town of Addison a final (non-temporary) certificate of occupancy and/or such other document or approval required or provided by the Town of Addison in connection with the construction and completion of the Pre-Renewal Term Improvements; and
- (d) All work done in connection with the Pre-Renewal Term Improvements shall have been in accordance with subsection D. of Section 2.02 and all other applicable provisions of the Lease.

2. **EXERCISE OF RENEWAL OPTION.** To exercise its Renewal Option, Tenant must deliver written notice of its exercise to Landlord at least **180** days before December 31, 2017. If Tenant fails to deliver this notice before the specified time, the Renewal Option will automatically and immediately terminate.

If Tenant timely exercises the Renewal Option, the Lease will be extended for the Renewal Term without the necessity of executing any additional instrument. On either party's request, the parties will sign and deliver a written agreement evidencing any changes to the initial Lease during the Renewal Term.

3. **TERMINATION OF LEASE.** Any termination of the Lease during the initial Term will terminate all renewal rights under the Lease. Tenant's renewal rights are not severable from the Lease and none cannot be assigned, conveyed, pledged or otherwise transferred (and Tenant shall have no power or authority to do so), even if Landlord permits an assignment, conveyance, pledge, or other transfer of the Lease. Landlord's consent to any assignment, conveyance, pledge or other transfer of the Lease will not assign or transfer any renewal rights.
4. **BROKER'S FEE.** In the event that Tenant exercises the Renewal Option set forth herein in accordance herewith, Landlord shall pay to Tenant's Broker named in Section 1.08 of the Lease, a real estate commission of \$23,476.50 (such amount being three percent (3%) of the Base Rent amount to be paid by Tenant to Landlord during the Renewal Term (\$156,510.00 each year for 5 years)). Such commission will be paid one-half (1/2) at the time of Tenant's exercise of the Renewal Option and one-half (1/2) on the commencement of the Renewal Term (provided Tenant has continuously occupied the Leased Premises and is not in breach of the Lease beyond any applicable cure period).

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

OPTION CONTRACT

This Option Contract is made effective this 14th day of December, 2002 (the "Effective Date"), by and between the Town of Addison, Texas (the "Town") and Amar Unlimited, Inc., a Texas corporation ("Amar").

Recitals:

1. The Town is the owner of certain real property located in the Town of Addison, Dallas County, Texas, as more particularly described in Exhibit 1, attached to and made a part hereof (the "Property").

2. The Town, as Landlord, and Prufrock Restaurants, Inc. ("Prufrock"), as Tenant, entered into a Lease of the Property on June 13, 1991 (the "Existing Lease"). Phoenix Restaurant Group, Inc. ("PRG") is the successor to Prufrock Restaurants, Inc.

3. On September 30, 1997 the Town of Addison, Texas, DenAmerica Corp. ("DenAmerica", successor to Prufrock and predecessor to PRG), and CNL American Properties Fund, Inc. entered into that certain Tri-Party Agreement (the "Tri-Party Agreement") which sets forth certain terms regarding the Existing Lease. The successor to CNL American Properties Fund, Inc. is CNL APF Partners, LP ("CNL").

4. In October, 2001 PRG filed a bankruptcy proceeding under the United States Bankruptcy Code in United States Bankruptcy Court for the Middle District of Tennessee, Case No. 301-12306, 12164, 12166, 12163 and 12167. On May 16, 2002 the Bankruptcy Court entered an Order authorizing PRG to assume and assign its interest in the Existing Lease and the Tri-Party Agreement. PRG has entered into an agreement with Amar Unlimited, Inc. ("Amar") in which PRG has agreed to assign to Amar, and Amar has agreed to assume, the obligations of PRG under the Existing Lease and the Tri-Party Agreement. The closing of the assignment and assumption occurred on August 21, 2002 (the "PRG/Amar Closing").

5. In conjunction with its negotiation with PRG and CNL, Amar approached the Town of Addison, Texas regarding Amar receiving an option to enter into a lease agreement of the Property for an additional five (5) year term following the expiration of the Existing Lease (the "New Lease") (provided Amar is not, at the time of exercising such option, in default under the Existing Lease).

6. The parties have executed a Memorandum of Option concurrently with the execution of this Option Contract containing a summary of this Option Contract, which Memorandum is to be recorded, and which is incorporated herein by reference and made a part hereof.

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

1. **Grant of Option.** For and in consideration of the payment of \$500.00 by Amar to the Town, the receipt of which is hereby acknowledged, the Town hereby grants to Amar the

exclusive right and option to lease the Property at the price and under the terms and conditions set forth herein; provided, however, that the grant of this option is subject to the following:

A. Amar shall be entitled to exercise this option only if, at the time of the exercise of the option, (i) Amar is not then in default of the Existing Lease, (ii) no condition exists which, with the passage of time or the giving of notice or both, would constitute a default under the Existing Lease, and (iii) Amar has continuously occupied the Property for the Permitted Use as set forth in the Existing Lease.

2. **Option Period.** The option to lease the Property shall commence on the date hereof and expire on June 30, 2012 (the "Option Period").

3. **Exercise of Option.** This option may be exercised by Amar at any time after December 31, 2011 and on or before 5:00 p.m. on June 30, 2012 (provided, however, that Amar shall not be entitled to exercise this option if, at the time of the attempted exercise of the option, Amar is then in default of the Existing Lease), by (i) depositing written notice of Amar's exercise of such option in the United States mail on or before 5:00 p.m. on the aforesaid date and (ii) by delivering written notice by hand of the exercise of this option to the Town, to the address set forth in Paragraph 7 below. Within ten (10) business days following the receipt of notice by the Town of Amar's exercise of the option, the Town and Amar shall execute the form of Lease Agreement which is attached hereto as Exhibit 2. If Amar fails to exercise this option before its expiration, the consideration paid herewith shall be retained by the Town.

4. **Automatic Termination.** If Amar fails to exercise the option in accordance with the terms of this Option Contract within the Option Period, or if at the time of Amar's attempted exercise of the option Amar shall then be in default under the Existing Lease, then the option to lease granted by this Option Contract and the rights thereunder of Amar shall automatically and immediately terminate without notice.

5. **Terms of Lease.** Upon proper exercise of the option in accordance with the terms of this Option Contract, the lease of the Property to Amar by the Town shall be made upon the terms and conditions set forth in the form of Lease Agreement attached hereto as Exhibit 2.

6. **Non-Assignability of Option.** Amar shall not and shall have no power or authority to assign, convey, pledge, or in any manner otherwise transfer (together, "transfer") this Option Contract or any right, duty or obligation hereunder without the prior written approval of the Town. Any transfer of this Option Contract or any right hereunder in violation of this provision shall render this Option Contract immediately null and void. The Town has the right to grant or withhold its approval in its sole discretion. A transfer will be deemed to occur if the person or persons who own or have voting control of 67% or more of Amar on the Effective Date cease to own or have voting control of 67% or more of Amar during the Option Period. Upon Amar's execution of this Option Contract, Amar shall give to the Town a written certification as to the ownership of voting securities or voting control of Amar as of the Effective Date. Upon the Town's request, Amar shall provide a written certification to the Town as to the ownership of voting securities or voting control of Amar. The certification shall be in a form acceptable to the Town and duly sworn to by an authorized officer of Amar with knowledge of the matters stated in the certification. In the event Amar shall fail to provide the Town with any such certification within twenty (20) calendar days after the Town's request for such certification, the Town shall have the right, in its sole discretion, to terminate this Option Contract.

7. **Notices.** Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed given as of the date of deposit in the U. S. Mail or upon actual receipt if delivered by hand. Mailed notices shall be addressed as set forth below, but each party may change his or her address by written notice in accordance with this Paragraph.

To the Town:

5300 Belt Line Road
Dallas Texas 75240-7606
Attention: City Manager

To Amar:

4460 Belt Line Road
Addison, TX 75001

8. **Entire Agreement.** This Option Contract and a Memorandum of Option executed on the same date as this instrument, which is incorporated herein by reference and made a part hereof, contain the entire agreement between the parties relating to the option herein granted. Any oral representations or modifications concerning this Option Contract and the accompanying Memorandum shall be of no force and effect, excepting a subsequent modification in writing, signed by the party to be charged and supported by consideration.

9. **Binding Effect.** This Option Contract and the accompanying Memorandum thereof shall bind and inure to the benefit of all the respective and authorized successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement the day and year first above written.

TOWN OF ADDISON, TEXAS

AMAR UNLIMITED, INC.

By: Ron Whitehead By: _____
Ron Whitehead, City Manager Printed Name: _____

ATTEST: Title: _____

By: C Moran
Carmen Moran, City Secretary

EXHIBIT 1

That real property generally located at 4460 Belt Line Road, Addison, Texas 75001, and as further described in the form of Lease Agreement attached to this Option Contract as Exhibit 2.

Council Agenda Item: #R12

AGENDA CAPTION:

Presentation, discussion and consideration of approval of any action regarding the Property Assessed Clean Energy (PACE) program, including the adoption of House Bill 1937 (2009) that added Chapter 376 to the Texas Local Government Code.

FINANCIAL IMPACT:

N/A

BACKGROUND:

Councilmember Daseke has requested that this item be placed on this Agenda for Council discussion regarding the PACE program and the possibility of seeking legislative changes.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

- [Memorandum Regarding PACE Program](#)
- [PACE Article](#)

Type:

- Cover Memo
- Cover Memo

H.B. 1937 (2009)

In 2009 the Texas Legislature adopted HB 1937 regarding energy efficiency. The bill was sponsored by Representative Mike Villareal out of San Antonio. The legislation added Chapter 376 to the Texas Local Government Code, a copy of which is attached. The analysis of HB 1937 by the House Research Organization described the legislation as allowing:

the governing body of a municipality to designate an area in which municipal officials and property owners could enter into contracts to assess properties for energy-efficient public improvements and to finance the installation of distributed generation renewable energy resources or energy-efficient improvements that would be permanently affixed to real property.

The bill provides in part as follows:

- The governing body of a city can designate an area (it can be the entire city) in which the city and property owners can enter into contracts to assess properties to finance the installation of energy efficiency improvements that are permanently affixed to real property
- The governing body must adopt a resolution that indicates the governing body's intent to designate an area for assessment and that, among other things:
 - identifies the types of energy efficiency improvements that may be financed
 - describes the proposed arrangements for financing the program
 - states the time and place for a public hearing on the proposed program
 - directs a city official to prepare a report, and to consult with the appraisal district about collecting the contractual assessments
- The report prepared by the city official must, among other things, include:
 - a statement of municipal policies concerning contractual assessments, including:
 - identification of types of energy improvements and sources that may be financed through contractual assessments
 - a maximum aggregate dollar amount of contractual assessments
 - a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the authorization amount
 - a method for ensuring that property owners requesting financing demonstrate the financial ability to fulfill financial obligations under the contractual assessments
 - a plan for raising a capital amount required to pay for work performed in accordance with contractual assessments.

- an assessment and any interest or penalties on the assessment constitutes a lien against the lot on which the assessment is imposed until the assessment, interest, or penalty is paid.

Following the adoption of HB 1937, Austin and San Antonio are the two cities that most vigorously pursued establishing a program, but to my knowledge have yet not completed it yet.

There are some legal concerns regarding the legislation:

- The Texas Constitution (article 3, section 52) prohibits cities providing public funds to private entities for purely private purposes. However, the Constitution does not prohibit the use of public funds that results in an incidental private benefit if (i) there is a predominant public purpose, (ii) the city retains sufficient controls over the transaction to ensure that the public purpose is achieved, and (iii) the public receives a return benefit. The statute is not clear that providing public funds to a private person for energy efficient equipment that benefits private property constitutes a public purpose.
- The statute currently states that an assessment by a city on private property to pay for the energy efficient equipment constitutes a lien against the property until the assessment is paid. However, the lien is not given any priority, so it would be subordinate to tax liens, mortgage liens, and other liens filed prior in time (and might be able to be extinguished upon foreclosure).
- The statute provides that a city is to consult with the appraisal district regarding collecting contractual assessments along with property taxes imposed on the assessed property. However, the statute does not provide any direct authority to the appraisal district to collect assessments, as the assessments are not a tax.

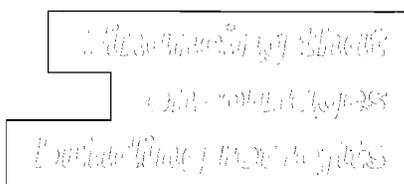
As of today, there has been no legislation introduced for the upcoming 2011 session of the Legislature to resolve these issues. However, I have spoken with Representative Villareal's office and have learned that he intends to file a bill to "clean up" the issues.

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ENERGY ALTERNATIVES

BY JACK D. HIDARY

A Market Solution for Achieving “Green”



The Problem

It's easy to get excited about the promise of clean technology—especially new high-efficiency and solar devices that can significantly reduce the energy use of existing homes and commercial buildings. But the retrofitting challenge we face is immense, and if we hope to see major progress, we must help home and building owners overcome the barrier of up-front costs.

Few of today's owners have the necessary capital on hand, or can tie it up until the break-even point is reached and payback begins. In theory they could tap into lines of credit and home equity to pay for clean tech, but in practice they are reluctant or unable to do so. Institutional investors, meanwhile, have the capital and the appetite for the sure and steady returns of clean-tech installations; but they are set up to write large checks, not to finance disaggregated, small-scale projects. And, as smart investors, they are leery of opportunities where borrowers can default but improvements can't be undone and funds recouped.

Already we are at the point—thanks to falling prices from large-scale production

in China and other manufacturing hubs, and thanks to government rebates—where some clean-tech retrofits achieve cash payback in less than three years. But unless we can provide the necessary assurance to investors and tap into private capital markets, the improved economics of clean technology won't make enough difference.

The Breakthrough Idea Enter PACE (Property Assessed Clean Energy) bonds, which are just being introduced in 15 states across the country. PACE bonds are debt instruments issued by a municipality and backed by property-tax liens on buildings whose owners take PACE loans from the bond pool. Here's an example: Suppose a commercial building in Annapolis, Maryland, has utility costs of \$20,000 a month, which include electricity and natural gas. The building owner, Annapolis Management, has done an energy audit and concluded that a \$300,000 investment in energy efficiency (retrofitting windows, lighting, and HVAC) would bring monthly utilities down to \$13,000.

Annapolis Management takes a \$300,000 loan from the city's PACE program and retrofits the building. The owner repays the loan over 20 years through an increase in the building's annual property taxes equal to one-twentieth of the loan amount plus interest. In this example, assuming an 8% interest rate, that means additional taxes of \$1,350 a month. Because this expense is markedly less than the utility cost savings of \$7,000, the owner is cash-flow positive from day one after retrofit.

The Promise Let's examine PACE bonds from the perspective of the city. The municipality issues the bonds, which are bought by institutional investors. Investors are drawn to bonds backed by property taxes, because they have very low default rates. The obligation to pay them survives foreclosure, so even if a property owner defaults on a mortgage, the new owner who buys the building at a bank fire sale must immediately bring the tax payments up to date.

PACE bonds are also very attractive to political leaders. As opt-in solutions, they

raise taxes only for the property owners who choose to take loans. Other constituents' pocketbooks are unaffected. Furthermore, retrofitting projects financed by PACE bonds bring employment for more construction and installation workers, potentially amounting to hundreds of thousands if not millions of jobs as this idea

spreads across the country. What politician would not want to lay claim to a program that increased property values, lowered monthly utility costs, and created jobs?

Jack D. Hidary, who is based in New York, is the chairman of PrimaryInsight.com and serves on the national steering committee of PACENow.org.