



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

AGENDA

SPECIAL MEETING AND WORK SESSION OF THE CITY COUNCIL

6:00 PM

JULY 16, 2012

ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254

Item #S1 Discussion and consideration of action regarding the Clay Pit restaurant, located at 4460 Belt Line Road, including but not limited to discussion and consideration of approval of a request by the tenant of the Clay Pit restaurant for a modification of the terms, including payment terms, of a lease of the restaurant site that commences January 1, 2013.

Attachment(s):

1. Background Information
 2. Request from the Clay Pit
 3. Current Lease Agreement
 4. 2005 Lease Amendment
 5. New Lease Agreement
-

Item #S2 Discussion regarding the Town of Addison's Long Term
- Financial Plan and tax rate.

Item #S3 Discussion of the Town of Addison's compensation plan.
-

Adjourn Meeting

Posted:
Chris Terry, 7/13/2012, 5:00 PM

**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:

Discussion and consideration of action regarding the Clay Pit restaurant, located at 4460 Belt Line Road, including but not limited to discussion and consideration of approval of a request by the tenant of the Clay Pit restaurant for a modification of the terms, including payment terms, of a lease of the restaurant site that commences January 1, 2013.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

- [Background Information](#)
- [Request from the Clay Pit](#)
- [Current Lease Agreement](#)
- [2005 Lease Amendment](#)
- [New Lease Agreement](#)

Type:

Backup Material
Backup Material
Backup Material
Backup Material
Backup Material

Clay Pit
History; New Lease Information

History

- On June 13, 1991 the Town entered into a 20-year lease with Prufrock Restaurants, Inc.; a Black-Eyed Pea restaurant was opened and operated on the site
- In September 1997 a lender (currently GE Capital) made a loan to the tenant, and the loan was evidenced by a promissory note and the building given as security; lease payments by the tenant included a payment to the Town for the land, and a payment to GE Capital for the building
- In October, 2001 the tenant filed bankruptcy and the Black-Eyed Pea closed; through the bankruptcy process, in August 2002 the lease was assigned to Amar Unlimited, Inc. and the Clay Pit restaurant was opened (Amar also operated a Clay Pit restaurant in Austin); at that time, Amar and the Town entered into an Option Contract that granted Amar the option to enter into a new lease following the end of the current lease term (option to be exercised, if at all, between January 1, 2012 and June 30, 2012)
- The lease was amended in 2005 to (i) clarify that the term of the lease would end on December 31, 2012, and (ii) to provide for a temporary rent reduction payment to the Town:
 - rent to the Town was reduced from March 2005 through February 2006 (the “Rent Reduction Period”)
 - from March 2006 through September 2006, rent was \$5,416.67
 - from October 2006 through September 2011, rent was \$6,375.00 (the “Rent Recovery Period”)
 - from October 2011 through December 2012, rent is \$5,833.33.
- On November 2, 2007, Amar assigned its leasehold interest to Twin City Hotels, LLC, a Nevada limited liability company
- In January 2011, Twin City Hotels assigned its leasehold interest to the current tenant, Durga Services LLC, a Texas limited liability company, and also assigned its interest in the Option Contract to Durga Services; in connection with the assignment, then unpaid rent (\$25,500), outstanding utility fees (approximately \$116.35), and 2009 and 2010 property taxes (approximately \$20,000) were paid
- Durga Services exercised its option under the Option Contract; next step is to sign the new lease (Option Contract states that it is to be signed within 10 business days after the Town’s receipt of notice of the exercise of the option); Town can require that Durga Services execute an unconditional guaranty of payment and performance of the new lease by a third person or third persons who control Durga Services

New Lease

- *Term:* 60 months, commencing January 1, 2013
- *Option to extend lease term:* tenant has option to lease for an additional 60 month term (option must be exercised at least 180 days prior to the end of the initial lease term)
- *Use of property:* premises may be used for a restaurant with alcoholic beverage service (as permitted by law)
- *Base Rent, Percentage Rent:*

Base Rent

Initial Term: \$140,000.00/year (\$11,666.67/month) (\$22.40 square foot x 6,250 square feet)

Renewal Term: \$156,510.00/year (\$13,042.50/month) (\$25.04 sf)

Percentage Rent

Initial Term: 6% of gross sales in excess of \$1,851,832.00 during a lease year

Renewal Term 6% of gross sales in excess of \$2,057,571.00 during a lease year

- *Construction of improvements:* Durga must construct improvements to the leased premises with a construction value of at least \$75,000.00; improvements are to be constructed at the beginning of the lease term, but Durga can receive credit for the improvements if it has constructed improvements to the premises during the 36 month period preceding the lease term.
- *Option to renew:* If, at the end of the lease term, Durga exercises the option to extend the term for an additional 5 years, Durga must construct additional improvements with a construction value of at least \$25,000.00 (improvements are to be constructed at the beginning of the renewal term, but Durga can receive credit for the improvements if it has constructed improvements to the premises during the 24 month period preceding the renewal term).
- *No assignment:* Durga cannot transfer or convey its lease rights without the prior written approval of the Town.
- *Commission:* Lease refers to a commission being paid to John T. Evans Co. (1/2 at the time of the execution of the Lease, and 1/2 on the commencement date of the Lease; commission is 3% of the Base Rent paid by Tenant during the lease term, or \$21,000 (provided Tenant pays first month's rent (\$11,666.67) and the Security Deposit (\$11,666.67) and one-half (1/2) on January 1, 2013 (provided Tenant has occupied the leased premises and has commenced making payments of Base Rent); the same broker commission is provided if the renewal term option is exercised.



CLAY PIT

4460 Beltline Rd, Addison, TX - 65001

Telephone: 972-233-0111

Mobile: 972-352-9607

Fax: 972-233-0141

Date: July 11, 2012

To:

The Town of Addison, TX

From:

Clay Pit

4460 Belt Line Rd.

Addison, TX 75001

Subject: New Lease starting 01/01/2013

Dear Sir/Madam,

Clay Pit restaurant has been successfully providing unique Dining experience to its guests in the DFW area for more than 10 years now and we have built a strong reputation in terms of excellent food, plus quality of service, during this time.

As new owners since Jan 2011, we have invested heavily into this business along with spending significant amounts for the repairs and maintenance of the property and purchase of Brand new non-movable equipment like HVAC, Water Heaters etc to replace the aged equipment.

As the original lease with the Town of Addison ends on 12/31/2012 and, we would like to sign up a new lease for a 5 year term starting 01/01/2013, with an option to renew the lease from 01/01/2018 for an additional 5 year period.

We feel that the business scenario has changed considerably in the last 6-7 years and the rents are not like before. For example, here are a few comparable rentals in the immediate neighborhood that are significantly lower than what we are paying today (Verifiable with respective businesses):

Business Name: Dennys

4301 Belt line Rd, Addison, TX 75001

Terms: Currently quoting Annual Base rent of 99,420.00 (5521 Sq Ft @ \$ 18.00 /Sq @ Double Net, which would be **significantly lower for Triple Net**).

Status: Still on Market and there is huge scope for negotiation.

Business Name: Sanabel's Mediterranean Grill (Previous location of Cafe Capri)

15107 Addison Rd, Addison, TX 75001

Terms: Annual Base rent of 90,000.00 (which is equivalent to approx **\$17.97/Sq Ft /Yr @ Triple Net for 4200 Sq ft**)

Status: Lease signed Last month (June 2012)



CLAY PIT

4460 Beltline Rd, Addison, TX - 65001

Telephone: 972-233-0111

Mobile: 972-352-9607

Fax: 972-233-0141

Business Name: **Azure**

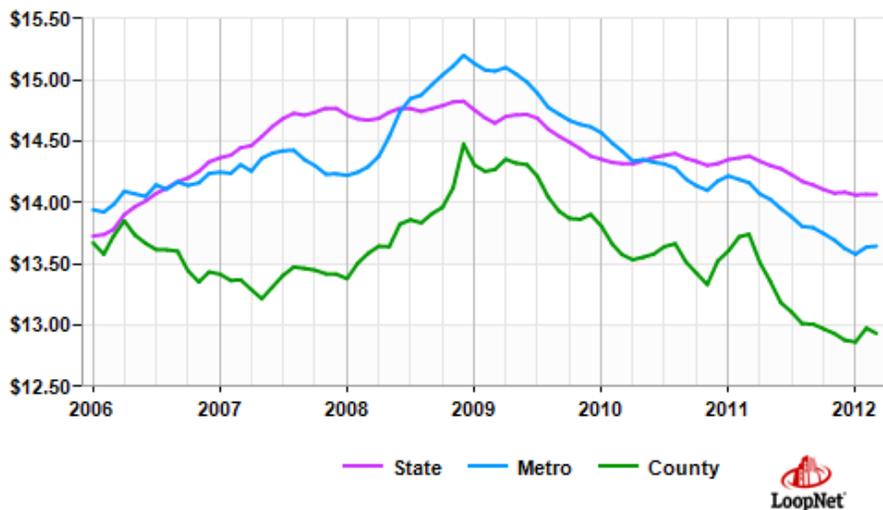
4080 Belt line Rd, Addison, TX 75001

Terms: Currently paying Annual Base rent of \$118,000.00 approx (7423 Sq Ft @ \$ 15.90 /Sq Ft@ Net Lease , which is less than **\$13.00/Sq Ft @ Triple Net**).

Status: Lease signed last year

Retail Property Asking Rent - Lease Trends (Source Loop.Net)

Asking Rent Retail for Lease Addison, TX (\$/SF/Year)



	Mar 12	vs. 3 mo. prior	Y-0-Y
State	\$14.07	0.0%	-2.2%
Metro	\$13.64	+0.2%	-3.7%
County	\$12.93	+0.2%	-5.9%

Asking rates for retail properties have gone up versus past quarter, rising 0.1% to \$13.64 per square foot. Meanwhile, lease rates for the year have dropped by 3.7%. Asking rates for retail properties reached a three-year high in December 2008 at \$15.20 per square foot. The current median asking lease rate is 2.3% lower. The lowest asking lease rate in the past three years was \$13.58 set in January 2012.



CLAY PIT

4460 Beltline Rd, Addison, TX - 65001

Telephone: 972-233-0111

Mobile: 972-352-9607

Fax: 972-233-0141

Despite the adverse business conditions and more than comparable rents, we have been working very hard, to adhere to the current rental commitments.

We would like to request Town of Addison to offer us a new lease of 5 years, for a Base Annual rent of **\$ 102,000.00 @ Triple Net** (Comparable Annual rate of \$16.32 \$/Sq Ft, for 6,250 Sq ft, payable in equal payments of \$8,500.00 per month) without any security deposit, along with an option to exercise the right to renew the lease for an additional 5 years, for a Base Annual rent of **\$ 122,400.00** starting on 01/01/2018 (payable in equal payments of \$10,200.00 per month). Please note, we have been paying approx \$15,000.00/Yr for property taxes.

With this new lease as of 01/01/2013, please acknowledge that, GE Capitol's portion of the rental payment (\$58,740.00 /Year) comes to an end and all the payment directly goes to the Town of Addison. Town of Addison would also save significantly with this new lease, as there would be no brokers involved in this agreement and moreover Town of Addison does not need to spend any money for improvements.

As mentioned above, we are swimming against a strong tide of adverse business conditions and we are hopeful that you will accommodate our request. This would complement our other efforts in cutting costs and would help turn this business, back into a successful & profitable venture over the next few years.

Yours Sincerely

Praveen Malraj
ClayPit Management
215-8698007 (Cell)

LEASE

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

This Lease (hereinafter referred to as "Lease" or "Agreement") made and entered into on this 13 day of June, 1996 by and between THE TOWN OF ADDISON, a Texas municipality, hereinafter called "Landlord", and PRUFROCK RESTAURANTS, INC., a Texas corporation, hereinafter called "Tenant", which provides as follows:

SECTION 1. GRANT OF LEASE AND TERM

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

SECTION 2. HOLDOVER

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

SECTION 3. RENT

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

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

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

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

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

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

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

3.3 Each installment of rent shall be payable to:

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

Attn: Finance Director

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

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

SECTION 4. FORCE MAJURE

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

SECTION 5. IMPROVEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. STATE OF THE TITLE, ZONING AND RESTRICTIONS

Landlord hereby warrants and represents to Tenant as follows:

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

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

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

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

SECTION 7. USE BY TENANT

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

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

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

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

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

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

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

SECTION 8. MAINTENANCE, REPAIRS AND UTILITIES

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

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

SECTION 9. ASSIGNMENT AND SUBLETTING

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

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

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

SECTION 10. SIGN AND DISPLAYS

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

SECTION 11. INSURANCE AND TAXES

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

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

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

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

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

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

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

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

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

SECTION 13. INDEMNIFICATION COVENANTS

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

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

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

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

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

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

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

SECTION 14. WAIVER OF SUBROGATION

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

SECTION 15. LANDLORD'S RIGHT TO INSPECT

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

SECTION 16. SUBORDINATION

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

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

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

SECTION 17. DEFAULT AND BANKRUPTCY

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

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

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

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

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

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

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

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

SECTION 18. CONDEMNATION

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

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

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

SECTION 19. ACCESS EASEMENT AND USE OF PROPERTY

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

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

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

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

SECTION 20. MECHANICS' AND MATERIALMEN'S LIENS

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

SECTION 21. ENVIRONMENTAL MATTERS

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

(a) Landlord's Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 22. MISCELLANEOUS

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

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

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

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

Landlord

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

Tenant

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

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

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

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

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

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

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

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

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

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

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

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

LANDLORD:

TOMM OF ADDISON

Date: June 13, 1991

By: R. W. White

TENANT:

PRUFROCK RESTAURANTS, INC.

Date: June 12, 1991

By: Theodore J. P. Pitt

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AMENDMENT TO LEASE

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

Recitals:

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

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

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

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

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

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

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

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

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

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

A. *Rent Adjustment*.

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

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

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

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

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

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

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

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

TOWN OF ADDISON, TEXAS

By: Ron Whitehead
Ron Whitehead, City Manager

ATTEST:

By: C Moran
Carmen Moran, City Secretary

AMAR UNLIMITED, INC.

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

**CNL APF PARTNERS, LP, a Delaware
limited partnership**

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

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

LEASE AGREEMENT

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

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

ARTICLE ONE: BASIC TERMS

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

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

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

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

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

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

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

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

Section 1.06. **Lease Year:** A Lease Year is each twelve (12) month period during the Lease Term, the first such Lease Year beginning on the Lease Commencement Date and ending on the last day of the twelfth month after the Lease Commencement Date (such last day being December 31, 2013).

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

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

Landlord's Broker: (none).
Tenant's Broker: John T. Evans Co.

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

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

Section 1.11. **Rent:**

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

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

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

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

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

ARTICLE TWO: **LEASE TERM; IMPROVEMENTS**

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

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

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

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

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

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

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

part of the obligation to construct and complete the Initial Tenant Improvements if Tenant has constructed improvements to the Leased Premises during the 36 month period preceding the Lease Commencement Date (the "Pre-Lease Period").

1. On the Lease Commencement Date, Tenant shall deliver to Landlord plans and specifications for the proposed Initial Tenant Improvements. Prior to any construction of any Initial Tenant Improvements, Tenant shall submit plans and specifications for the Initial Tenant Improvements to Landlord for Landlord's review and consideration of approval. For purposes of this Lease, plans and specifications shall be deemed approved by Landlord if such plans and specifications are approved by the Town of Addison City Manager. If Tenant shall fail to deliver to Landlord bona fide plans and specifications for the Initial Tenant Improvements on the Lease Commencement Date, Landlord shall have the right to immediately terminate this Lease. If Landlord and Tenant have not reached final agreement on proposed plans and specifications for the Initial Tenant Improvements before March 1, 2013, then either Landlord or Tenant shall have the right to immediately terminate this Lease (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease). If Landlord and Tenant reach mutual agreement as to plans and specifications for the Initial Tenant Improvements in a timely fashion, then Tenant will thereafter promptly commence construction of the Initial Tenant Improvements and proceed diligently to final completion of the Initial Tenant Improvements under the following terms and conditions:
 - (a) Upon the final completion of the Initial Tenant Improvements, Tenant shall present evidence to Landlord that the Construction Value of the Initial Tenant Improvements is not less than \$75,000.00. Such evidence shall include true and correct copies of all invoices, receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof, the amount actually paid and payment for such design and construction work, and such other information as Landlord may request. For purposes of this Lease, the Initial Tenant Improvements shall be deemed completed upon the issuance by the Town of Addison of a final (non-temporary) certificate of occupancy and/or such other documents or approvals required or provided by the Town of Addison in connection with the construction and completion of the Initial Tenant Improvements;
 - (b) In the event that the Initial Tenant Improvements are not commenced and/or completed in accordance herewith, or if such evidence regarding the Construction Value of the completed Initial Tenant Improvements has not been presented as set forth herein, Landlord shall have the right to immediately terminate this Agreement (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease); and
 - (c) All work done in connection with the Initial Tenant Improvements shall be in accordance with paragraph D. of this Section 2.02 and other applicable provisions of this Lease.

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

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

1. Any labor performed at the Leased Premises and all materials furnished to the Leased Premises shall be at Tenant's own cost, expense, and risk. Labor and materials used in the installation of Tenant's furniture and fixtures, and in any other work on the Leased Premises performed by Tenant, will be subject to Landlord's prior written approval. Any such approval of Tenant's laborers shall constitute a license authorizing Tenant to permit laborers to enter upon the Leased Premises; provided, however, that the continued effectiveness of such license is conditioned upon Tenant's aforesaid laborers not unreasonably interfering with the operations or use of any other of Landlord’s property. Accordingly, if at any time such entry of Tenant's laborers shall cause any such unreasonable interference, this license may be withdrawn by Landlord upon forty-eight (48) hours' written notice to Tenant, upon expiration of which Tenant shall have caused all of Tenant's laborers (as to whom Landlord shall have given such notice) to have been removed from the Leased Premises. Tenant agrees to

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

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

subcontractors, laborers, material suppliers engaged in or supplying materials for such work have been paid in full.

5. All improvements constructed by Tenant at the Leased Premises (excepting only removable trade fixtures, furniture, and equipment installed by Tenant) shall, immediately upon such construction, become and remain the property of Landlord; and Tenant shall have no right, title, or interest (including lien interest) therein, except only as Tenant under the provisions of the Lease. The aforesaid improvements, if constructed by Tenant, are not intended as any nature of rent or compensation to Landlord.
6. Landlord assumes no responsibility with respect to any plans and specifications for construction work to be performed by Tenant or on behalf of Tenant, the selection of general contractors and subcontractors, and/or the performance of any construction work for which Tenant is responsible under the terms of this Lease. By accepting, consenting to, or approving any item, person, or matter which is delivered or presented to Landlord or which is required to be accepted, consented to, or approved by Landlord pursuant to this Lease, including, without limitation, the approval of any plans and specifications for Tenant improvements or other work and/or the approval of any general contractors or subcontractors, Landlord shall not be deemed to have warranted or represented the sufficiency, effectiveness, or any other characteristics of the same, or of any term, provision, or condition thereof, and such acceptance, consent to, or approval thereof shall not be or constitute any warranty or representation of any kind or nature with respect thereto by Landlord.

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

Section 3.01. Time and Manner of Payment.

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

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

1. Within thirty (30) days after the end of a Lease Year, Tenant shall furnish to Landlord a report certified under oath to be true and correct by an officer of Tenant showing the total Gross Sales made in or from the Leased Premises during the applicable Lease Year, and if such Gross Sales disclosed thereby are sufficient to require a payment of Percentage Rent, such payment shall accompany the report.

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

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

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

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

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

Section 3.04. Interest on Past Due Obligations. Any sums required to be paid hereunder and not paid when due, including attorneys' fees, shall bear interest, until paid, at the lesser of the following rates: (i) 18% per annum; or (ii) the highest rate allowed under applicable law (such lesser rate being referred to herein as the "Past Due Rate"). Interest shall accrue on monthly Base Rent payments and late charges from the fifth day of each Lease month until such payments are received by Landlord and, on returned check charges, from the date Landlord receives such returned check until such returned check is made good. All agreements between Landlord and Tenant, whether now existing or hereafter arising, whether herein contained or in any other instrument or agreement, whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall any acceleration of rents due, late charges, returned check charges, interest charges, or any other charges whatsoever, be deemed as interest charged, contracted for or received in excess of the amount permitted under applicable law, it particularly being the intention of the parties hereto to conform strictly to the laws of the State of Texas. Any portion of such charges which are deemed as interest in excess of the amount permitted under applicable law, as of the date such charge is due, shall be applied to a reduction of the rental payment next coming due hereunder, or, if such portion of charges exceeds the rental payment

next coming due hereunder, such amount shall be refunded to Tenant. To the extent permitted by law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating, and spreading in equal parts during the period of the full term of this Lease, all amounts deemed as interest at any time contracted for, charged or received from Tenant in connection with this Lease.

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

ARTICLE FOUR: UTILITIES AND SERVICES; INSURANCE

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

Section 4.02. **Insurance.**

A. **Improvements.** During the Lease Term: (i) Tenant shall maintain at its own cost and expense a policy or policies of insurance (all risks) covering loss of or damage to the Building and other improvements on the Leased Premises for the full replacement value thereof; such insurance policy or policies shall name the Town of Addison, Texas as an additional insured, and the policy or policies must provide that any proceeds for loss or damage to the Building or to any improvements are payable solely to Landlord; and Tenant shall not use or permit the use of the Leased Premises or any part thereof for any purpose called extra hazardous by insurance companies; and (ii) Tenant shall maintain policies of insurance which cover loss or damage to any improvements made by Tenant on or to the Leased Premises and for Tenant's furniture, fixtures, and equipment, in the full amount of their replacement value and which names the Town of Addison, Texas as an additional insured as its interest may appear. All such policies shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall not be required to obtain insurance for Tenant's equipment

or any improvements constructed or placed by Tenant on the Leased Premises or any other improvements to the Building or otherwise installed by Tenant on the Leased Premises. Tenant shall not do or permit anything to be done which invalidates any insurance policies in connection with the Leased Premises.

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

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

D. General Insurance Provisions.

1. With reference to the foregoing insurance requirements, Tenant shall specifically endorse applicable insurance policies as follows:
 - (a) The Town of Addison shall be named as an additional insured with respect to liability insurance and all property insurance.
 - (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
 - (c) A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the builders risk, property and all liability policies.
 - (d) All insurance policies to be provided by Tenant shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
 - (e) All insurance policies to be provided by Tenant shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

- (f) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
 - (h) With respect to insurance to be provided by Tenant, Tenant may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
 - (i) Tenant must purchase insurance from insurers that are financially acceptable to the Town of Addison.
2. The amount of any insurance set forth herein to be provided by Tenant shall be subject to reasonable increase or modification as Landlord may reasonably request. The amount and coverage of any insurance set forth herein shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.
 3. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above which is to be provided by Tenant, shall be furnished to Landlord prior to the Lease Commencement Date, with complete copies of policies furnished to the Landlord upon request. Landlord reserves the right to review and revise from time to time the types of insurance and insurance limits required herein. Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following: (a) sets forth all endorsements and insurance coverages according to requirements and instructions contained herein, and (b) shall specifically set forth the notice-of-cancellation or termination provisions to the Landlord.
 4. If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled, non-renewed or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.
 5. Tenant shall maintain all insurance required under this Lease with companies licensed to do business in the State of Texas. Insurance must be purchased and maintained from insurers that are acceptable to the Town of Addison. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.
 6. Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for

loss of or damage to its property or the property of others under its control, if such loss or damage is fully covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage and such insurance fully pays for such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

ARTICLE FIVE: USE OF LEASED PREMISES

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

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

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

Section 5.03. **Hazardous Materials.**

A. Throughout the Lease Term, Tenant shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises other than in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. For purposes of this provision, the term "Hazardous Materials" shall mean and refer to any wastes, materials, or

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

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

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

D. Without in any way limiting any other provision set forth in this Lease, Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold harmless the Town of Addison, Texas, its officials, officers, employees, agents, attorneys, successors, and assigns (together for purposes of this paragraph, "Indemnified Persons") from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to or destruction of any property whatsoever, or other or other harm for which

recovery of damages or any other type of recovery (whether at law or in equity) is sought, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the Leased Premises or any improvements thereon, or any discharge or release in or from the Leased Premises or any improvements thereon, of any Hazardous Materials, caused by or resulting from any act or omission of Tenant, or Tenant's officers, employees, agents, concessionaires, contractors, subcontractors, or invitees, whether before or during the Lease Term or at any time while Tenant occupies the Leased Premises, or (ii) Tenant's failure to comply with any law, rule, regulation, order, or ordinance relating to Hazardous Materials. The indemnity obligation created hereunder shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of or in connection with the Leased Premises, any improvements thereon, or this Lease. The obligations of the parties hereunder shall survive the expiration or earlier termination of this Lease.

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

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

Section 5.06. **Landlord's Access.** Landlord or its agents may enter the Leased Premises at all reasonable times to show the Leased Premises to any person; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or to do any other acts necessary or desirable for the use and operation of the Leased Premises or any of

Landlord's property; provided, however, that Landlord shall use reasonable efforts not to unreasonably disturb Tenant's use of the Leased Premises. Landlord shall give Tenant prior notice of such entry, except in the case of an emergency. Landlord may place customary "For Lease" signs on the Leased Premises.

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

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

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

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

Section 6.03. Tenant's Obligations.

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

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

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

ARTICLE SEVEN: **DAMAGE OR DESTRUCTION**

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

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

B. If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which is

maintained under Section 4.02, Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If the damage was due to an act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Tenant shall pay the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate the Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Leased Premises. Tenant shall pay the cost of such repairs, except that upon completion of such repairs to Landlord's satisfaction, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

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

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

Section 7.03. Temporary Reduction of Rent. If the Leased Premises is destroyed or damaged and Landlord or Tenant repairs or restores the Leased Premises pursuant to the provisions of this Article Seven, any Rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Leased Premises is impaired; provided, however, that if the damage or destruction was caused by any act or omission of Tenant, or Tenant's officers, employees, agents, contractors or invitees, Rent shall not be reduced and Tenant shall have the continuing obligation to pay Rent in full during the period of such rebuilding or repair. Except for such possible reduction in Rent, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Leased Premises.

ARTICLE EIGHT: CONDEMNATION

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

ARTICLE NINE: ASSIGNMENT AND SUBLETTING

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

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

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

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

ARTICLE TEN: DEFAULTS AND REMEDIES; LIEN

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

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

B. Tenant or any guarantor of Tenant's obligations hereunder shall (i) commit an act of bankruptcy; (ii) file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law;(iii) become insolvent; (iv) admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations hereunder and the same is not dismissed within sixty (60) days; or (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. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Leased Premises with Tenant's expressed or implied permission. Time is of the essence of this Agreement.

Section 13.04. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Leased Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.05. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above, except that upon Tenant's taking possession of the Leased Premises, the Leased Premises shall be Tenant's address for notice purposes. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.06. **Waivers.** All waivers must be in writing and signed by the waiving party, and Landlord's waiver of any right, or of Tenant's breach, on one or more occasions will not be deemed a waiver on any other occasion. Landlord's failure to enforce any provision of this Lease or its acceptance of Rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment from Tenant shall be binding on Landlord, nor shall be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other rights or remedies. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.07. **Recordation.** Tenant shall not record this Lease or any memorandum of this Lease without prior written consent from Landlord. Tenant agrees that it will, upon request of the Landlord, execute and deliver a Memorandum of Lease in recordable form for the purpose of giving record notice of this Lease.

Section 13.08. **Binding Effect; Choice of Law; Venue.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. Venue for any lawsuit, action or cause of action under this Lease shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Lease; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of

Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

Section 13.09. **Corporate Authority.** Each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation.

Section 13.10. **Joint and Several Liability.** If more than one party is signing this Lease as Tenant, such parties shall be jointly and severally liable for all obligations of Tenant.

Section 13.11. **Force Majeure.** Except as set forth below with respect to Tenant's obligation to pay Rent (Base Rent and Percentage Rent), if either party cannot perform any of its obligations due to events beyond such party's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond a party's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. Notwithstanding any provision herein to the contrary, events beyond Tenant's control shall not excuse Tenant from the requirement to pay all Rent (Base Rent and Percentage Rent) hereunder on a timely basis.

Section 13.12. **Survivability of Rights and Remedies.** Any rights and remedies either party may have with respect to the other arising out of the performance or non-performance of this Lease Agreement shall survive the cancellation, expiration or termination of this Lease Agreement.

Section 13.13. **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. **Permit Approval.** Nothing contained in this Lease shall constitute approval by the Town of Addison for purposes of obtaining building permits, sign permits, zoning, occupancy permits, or any other permits or licenses which Tenant may be required to obtain.

Section 13.15. **Exhibits and Rider.** The attached Exhibit (Exhibit "A" – Legal Description) and Rider (Rider 1 – Renewal Option) are part of this Lease.

ARTICLE FOURTEEN: SPECIAL PROVISIONS

Section 14.01. **Broker's Fee.** Landlord shall pay to Tenant's Broker named in Section 1.08 above, a real estate commission of \$21,000.00 (such amount being three percent (3%) of the Base Rent amount to be paid by Tenant to Landlord during the Lease Term (\$140,000.00 each year for 5 years)). The commissions payable hereunder will be paid one-half (1/2) at the time of Lease execution (provided that Tenant pays to Landlord at the time of such execution the first month's rent and the Security Deposit) and one-half (1/2) on the Lease Commencement Date (provided that Tenant has occupied the Leased Premises and has commenced making payments of Base Rent hereunder). Tenant and Landlord acknowledge that no other brokers have been affiliated in any way with this Lease and both parties hold the other harmless of any claims from other brokers claiming by or through their respective party.

Section 14.02 **Access Easement and Use of Property.** Landlord hereby grants to Tenant during the term of this Lease a non-exclusive license to provide automobile access to Belt Line Road over Landlord's adjacent property as described in Exhibit "A" (Tract II therein) for the benefit of the Leased Premises. Tenant does hereby grant to Landlord and its tenant or successors and assigns a non-exclusive license to use, without charge, a portion of the Leased Premises as described in Exhibit "A" (Tract III therein) to provide vehicular access from Belt Line Road for the benefit of the Landlord's adjacent property. The non-exclusive Licenses granted herein to Tenant and Landlord shall be for the purpose of foot and vehicular ingress and egress. Landlord and Tenant shall not erect any curb or barrier between the Leased Premises and the Landlord's property which would interfere with the traffic, and shall cooperate with each other in providing reciprocal access between them. Tenant, at all times, shall maintain in good condition and repair the hard surface paving constructed on its tract and insure that ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld.

LANDLORD AND TENANT have signed this Lease at the place and on the dates specified adjacent to their signatures below.

LANDLORD:

TENANT:

TOWN OF ADDISON, TEXAS

AMAR UNLIMITED, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Printed Name: _____

Dated: _____, _____

Title: _____

Dated: _____, _____

EXHIBIT "A"

LEGAL DESCRIPTION

In addition to the description of Tract I, Tract II and Tract III contained in this Exhibit "A", page 4 of this Exhibit is a general depiction (not to scale) of the Leased Premises and Landlord's adjacent property thereto.

RIDER 1

Renewal Option

1. **GRANT OF RENEWAL OPTION.** So long as (1) no Default has ever occurred under this Lease, (2) no condition exists which, with the passage of time or the giving of notice or both, would constitute a Default, and (3) Tenant continuously occupies and uses the Leased Premises for the Permitted Use, Tenant (but not any assignee, licensee, subtenant, or other transferee) will have the one (1) time option (**Renewal Option**) to renew this Lease for **one (1)** additional **Sixty (60)** month term (**Renewal Term**) (to begin upon the expiration of the initial Lease Term) on all of the terms and conditions expressed in this Lease, except that:
 - (a) no abatements or other concessions (if any) during the initial Lease Term will apply to the Renewal Term;
 - (b) the Base Rent for the Renewal Term shall be an annual charge equal to One Hundred Fifty Six Thousand Five Hundred Ten and No/100 Dollars (\$156,510.00). The Base Rent will be paid in advance in monthly installments, determined by dividing the annual rental amount set forth hereinabove by twelve (12) (so that each monthly payment shall equal Thirteen Thousand Forty Two and 50/100 Dollars (\$13,042.50));
 - (c) the Percentage Rent for the Renewal Term shall be in an amount determined by multiplying (i) six percent (6%), times (ii) the total Gross Sales made in or from the Leased Premises which are in excess of Two Million Fifty Seven Thousand Five Hundred Seventy One and No/100 Dollars (\$2,057,571.00) during the applicable Lease Year.
 - (d) Tenant will have no option to renew this Lease beyond the Renewal Term;
 - (e) Tenant will accept the Leased Premises and all leasehold improvements in their then-existing condition (*i.e.*, **AS IS, WHERE IS, AND WITH ALL FAULTS**) when the Renewal Term begins;
 - (f) Landlord will be entitled to add, update, or clarify any terms of the Lease in light of changes in any laws, statutes, case law, or circumstances, as long as such additional provisions do not substantially alter the obligations of Landlord and Tenant under this Lease; and
 - (g) In connection with the Renewal Term, Tenant shall construct and complete improvements to the Leased Premises (the "Renewal Term Tenant Improvements") with a construction value (design (architecture, engineering) costs plus construction costs (together,

“Construction Value”)) equal to or in excess of \$25,000.00. Such Renewal Term Tenant Improvements shall be constructed and completed following the commencement of the Renewal Term in accordance with subsection C.1 of this Section below; provided, however, that Tenant may, as set forth below in and in accordance with subsection C.2 of this Section, satisfy (to the extent of the Construction Value of the Pre-Renewal Term Improvements (as hereinafter defined)) all or part of the obligation to construct and complete the Renewal Term Tenant Improvements if Tenant has constructed improvements to the Leased Premises during the 24 month period preceding the commencement of the Renewal Term (the “Pre-Renewal Term Period”).

1. On the first day of the Renewal Term, Tenant shall deliver to Landlord plans and specifications for the proposed Renewal Term Tenant Improvements. Prior to any construction of any Renewal Term Tenant Improvements, Tenant shall submit plans and specifications for the Renewal Term Tenant Improvements to Landlord for Landlord’s review and consideration of approval. For purposes hereof, plans and specifications shall be deemed approved by Landlord if such plans and specifications are approved by the Town of Addison City Manager. If Tenant shall fail to deliver to Landlord bona fide plans and specifications for the Renewal Term Tenant Improvements on the first day of the Renewal Term, Landlord shall have the right to immediately terminate this Lease. If Landlord and Tenant have not reached final agreement on proposed plans and specifications for the Renewal Term Tenant Improvements before March 1, 2018, then either Landlord or Tenant shall have the right to immediately terminate this Lease (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease). If Landlord and Tenant reach mutual agreement as to plans and specifications for the Renewal Term Tenant Improvements in a timely fashion, then Tenant will thereafter promptly commence construction of the Renewal Term Tenant Improvements and proceed diligently to final completion of the Renewal Term Tenant Improvements under the following terms and conditions:
 - (a) Upon the final completion of the Renewal Term Tenant Improvements, Tenant shall present evidence to Landlord that the Construction Value of the Renewal Term Tenant Improvements is not less than \$25,000.00. Such evidence shall include true and correct copies of all invoices, receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof,

the amount actually paid and payment for such design and construction work, and such other information as Landlord may request. For purposes of this Lease, the Renewal Term Tenant Improvements shall be deemed completed upon the issuance by the Town of Addison of a final (non-temporary) certificate of occupancy and/or such other documents or approvals required or provided by the Town of Addison in connection with the construction and completion of the Renewal Term Tenant Improvements;

(b) In the event that the Renewal Term Tenant Improvements are not commenced and/or completed in accordance herewith, or if such evidence regarding the Construction Value of the completed Renewal Term Tenant Improvements has not been presented as set forth herein, Landlord shall have the right to immediately terminate this Agreement (and Tenant shall not be entitled to any cure period notwithstanding any other provision of this Lease); and

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

2. During the Pre-Renewal Term Period, Tenant may construct and complete improvements to the Leased Premises ("Pre-Renewal Term Improvements"). Such Pre-Renewal Term Improvements may satisfy, to the extent of the Construction Value of such Pre-Renewal Term Improvements, Tenant's obligation to construct and complete the Renewal Term Tenant Improvements provided:

(a) Tenant, prior to construction of any Pre-Renewal Term Improvements, submitted plans and specifications for the Pre-Renewal Term Improvements to Landlord for Landlord's review and consideration of approval, and such plans and specifications were approved by the Town of Addison City Manager;

(b) Tenant shall certify and present to Landlord, on the first day of the Renewal Term, evidence of the Construction Value of the Pre-Renewal Term Improvements. Such evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the design and construction work performed, the cost thereof, the amount actually paid and payment for such design and

construction work, and such other information as Landlord may request;

- (c) Tenant shall present evidence to Landlord, on the first day of the Renewal Term, that Tenant received from the Town of Addison a final (non-temporary) certificate of occupancy and/or such other document or approval required or provided by the Town of Addison in connection with the construction and completion of the Pre-Renewal Term Improvements; and
- (d) All work done in connection with the Pre-Renewal Term Improvements shall have been in accordance with subsection D. of Section 2.02 and all other applicable provisions of the Lease.

2. **EXERCISE OF RENEWAL OPTION.** To exercise its Renewal Option, Tenant must deliver written notice of its exercise to Landlord at least **180** days before December 31, 2017. If Tenant fails to deliver this notice before the specified time, the Renewal Option will automatically and immediately terminate.

If Tenant timely exercises the Renewal Option, the Lease will be extended for the Renewal Term without the necessity of executing any additional instrument. On either party's request, the parties will sign and deliver a written agreement evidencing any changes to the initial Lease during the Renewal Term.

3. **TERMINATION OF LEASE.** Any termination of the Lease during the initial Term will terminate all renewal rights under the Lease. Tenant's renewal rights are not severable from the Lease and none cannot be assigned, conveyed, pledged or otherwise transferred (and Tenant shall have no power or authority to do so), even if Landlord permits an assignment, conveyance, pledge, or other transfer of the Lease. Landlord's consent to any assignment, conveyance, pledge or other transfer of the Lease will not assign or transfer any renewal rights.
4. **BROKER'S FEE.** In the event that Tenant exercises the Renewal Option set forth herein in accordance herewith, Landlord shall pay to Tenant's Broker named in Section 1.08 of the Lease, a real estate commission of \$23,476.50 (such amount being three percent (3%) of the Base Rent amount to be paid by Tenant to Landlord during the Renewal Term (\$156,510.00 each year for 5 years)). Such commission will be paid one-half (1/2) at the time of Tenant's exercise of the Renewal Option and one-half (1/2) on the commencement of the Renewal Term (provided Tenant has continuously occupied the Leased Premises and is not in breach of the Lease beyond any applicable cure period).

Council Agenda Item: #WS2

AGENDA CAPTION:

Discussion regarding the Town of Addison's Long Term Financial Plan and tax rate.

FINANCIAL IMPACT:

There is no direct cost associated with this item.

BACKGROUND:

This item will be presented at the work session.

RECOMMENDATION:

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #WS3

AGENDA CAPTION:

Discussion of the Town of Addison's compensation plan.

FINANCIAL IMPACT:

There is no direct cost associated with this item.

BACKGROUND:

This item will be presented at the work session.

RECOMMENDATION:

COUNCIL GOALS:

Mindful Stewardship of Town Resources, Maintain and Enhance our Unique Culture

ATTACHMENTS:

Description:

Type:

No Attachments Available