

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND TN MANAGEMENT, LLC D/B/A ASTORIA CAFFE TO ALLOW USE OF THE RIGHT-OF-WAY FOR OUTDOOR PATIO SEATING, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The License Agreement between the Town of Addison and TN Management, LLC d/b/a Astoria Caffè, to allow use of the right-of-way for outdoor patio seating, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 9th day of August, 2016.

Todd Meier, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

STATE OF TEXAS §
 § **LICENSE AGREEMENT**
COUNTY OF DALLAS §

This License Agreement is entered into this _____ day of August, 2016 by and between the Town of Addison, Texas (the “City”) and TN Management, LLC.

RECITALS:

WHEREAS, the Town of Addison, Texas is a home rule city possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072, Tex. Loc. Gov. Code, and its Home Rule Charter; and

WHEREAS, the City is authorized to control and regulate an encroachment or obstruction on a public street within the City (§ 311.001, Tex. Transp. Code) and to permit and prescribe the consideration and terms for the use of a portion of a City street or sidewalk for a private purpose if the use does not interfere with the public use of the street or sidewalk or create a dangerous condition on the street or sidewalk (§ 316.021, Tex. Transp. Code); and

WHEREAS, the parties hereto recognize and agree that the City’s authority with respect to the public rights-of-way within the Property goes to the full width of the right-of-way and extends indefinitely upward or downward; and

WHEREAS, Operator desires to use a portion of the right-of-way adjacent to the restaurant, located at 15701 Quorum Drive, for outdoor dining; and

WHEREAS, the City and Operator desire to enter into this License Agreement to permit Operator to utilize a portion of the public right-of-way for outdoor seating to serve the patrons of 15701 Quorum Drive, provided that such complies with the Town’s policy for use of the right-of-way in the Addison Circle District adopted by Resolution No. R015-038 on September 8, 2015; and

WHEREAS, the Addison Circle District is bounded by Airport Parkway to the North, Arapaho Road to the South, the Dallas Parkway to the East, and Addison Road to the West.

NOW, THEREFORE, for and in consideration of the Ten and No/100 Dollars (\$10.00), the mutual covenants and obligations set forth herein, and other good and valuable consideration, the City and Operator do hereby agree as follows:

1. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

2. Grant of license. The City does hereby grant to Operator a revocable license to occupy that portion of the right-of-way adjacent to Operator’s restaurant located at 15701 Quorum Drive and as shown on Exhibit A, attached hereto and incorporated herein (the “Licensed Area”).

Operator shall occupy the License Area in full compliance at all times with all of the following conditions:

- (a) Operator shall maintain the ADA accessible pathway adjacent to Operator's restaurant;
- (b) No use of the right-of-way is permitted outside the License Area;
- (c) Within the License Area, the Operator may place only moveable items that are not attached to the pavement. Examples of such items include: tables, chairs, planters, heaters, portable lights, umbrellas, etc. as permitted by Town ordinances;
- (d) All items placed in the License Area shall be maintained in safe, neat and good physical condition; and
- (e) Operator shall provide written notice, in accordance with Section 8(c), within 24 hours of Operator's observation of a defect in the pavement or any other condition in the License Area that might pose a danger or harm to the public or persons occupying or passing through the License Area. If such defect is the result of Operator's use of the License Area, Operator shall reimburse the City for the cost of repair.

3. Term/Fee. This license granted herein shall continue in force for a period of ten (10) years from the date of execution of this License Agreement, subject to termination as set forth in paragraph 7 hereof. The fee for the license granted herein shall be Five Hundred Dollars (\$500.00) per year and shall be due and payable no later than January 31st of each calendar year. The initial fee of Five Hundred Dollars (\$500.00) shall be due at the time of the execution of this agreement and subsequent annual fees shall be payable no later than January 31 of each calendar year.

Should this license be terminated by the City in accordance with Section 7, the Town agrees to refund a pro rata share of the fee based on the number of months remaining in the year.

4. Non-exclusive license. This license is not exclusive, and is subject and subordinate to: (a) the right of the City to use the licensed area for any purpose; (b) any existing street utility, drainage or communication facility located in, on, under or upon Addison Circle; (c) all vested rights presently owned by any utility or communication company; (d) any existing license, lease, easement, or other interest heretofore granted by the City and (e) the terms and conditions of this License Agreement.

5. Insurance. Operator shall purchase and maintain during the term of this License Agreement commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this License Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis.

Such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Certified copies of all of such policies shall be delivered to the City upon the execution of this License Agreement; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page

of such policies, along with the endorsement naming the Owner as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the Owner shall receive written notice of such cancellation, non-renewal or modification.

The City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by the City.

6. INDEMNITY. OPERATOR SHALL INDEMNIFY THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL LIABILITY, ACTIONS, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, CLAIMS, DAMAGES, COSTS OR FEES, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE, FOR ANY INJURY TO OR THE DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY RESULTING FROM OR BASED UPON, IN WHOLE OR IN PART, ANY ACT OR OMISSION OF OPERATOR, ITS OFFICERS, EMPLOYEES AND AGENTS UNDER THIS LICENSE AGREEMENT AND ANY ACT OR OMISSION OF THE CITY, SPECIFICALLY INCLUDING THE CITY'S NEGLIGENCE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LICENSE AGREEMENT.

7. Termination. This License may be terminated:

(a) By the City:

(i) in the event Operator fails to comply with any of the terms of this License Agreement within ten (10) days after receipt of notice by Operator from the City of such failure to comply; or

(ii) Operator discontinues or abandons the use of the public rights-of-way for the purposes set forth herein; or

(iii) upon thirty (30) days' written notice by the City to Operator;

(iv) at such time as Operator no longer operates the restaurant that is the subject of this License Agreement; or

(b) At any time by Operator upon thirty (30) days' written notice by Operator to the City.

8. Miscellaneous.

(a) Assignment. The rights, duties and responsibilities hereunder shall not be assigned, conveyed or otherwise transferred by Operator without the prior written consent of the City.

(b) Force Majeure. In the event either the City or Operator shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform

and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

(c) Notices. Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested, and addressed to:

To the City:

Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001

Attn: City Manager

To Operator.:

TN Management, LLC
15701 Quorum Drive
Addison, TX 75001

Attn: Elena Arsova

(d) Governing Law; Venue. This License Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this License Agreement are performable in Dallas County, Texas. Venue for any action under this License Agreement shall be in Dallas County, Texas.

(e) Legal Construction. In case any one or more of the provisions contained in this Street License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the License Agreement, and this License Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this License Agreement.

(f) Entire Agreement. This License Agreement represents the entire and integrated agreement between the City and Operator relative to Addison Circle Signs as described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.

(g) Amendment. This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Operator.

(h) 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 License Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

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

TOWN OF ADDISON, TEXAS

TN Management, LLC

By: _____
Wesley S. Pierson, City Manager

By: _____
Elena Arsova

ATTEST:

Laura Bell, City Secretary

EXHIBIT A

