

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND PRIME STEAK MANAGEMENT, INC., FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, 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 Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and Prime Steak Management Inc., for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved.

The City Manager is hereby authorized to execute the contract.

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 22nd day of August, 2017.

Joe Chow, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Exhibit A

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS #
COUNTY OF DALLAS #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and **Prime Steak Management, Inc., DBA, CHAMBERLAIN'S BRAU HAUS** (hereinafter referred to as "Chamberlains"), on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 14, 15, 16, and 17, 2017;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Chamberlain's desires to provide music, beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Chamberlain's providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Chamberlain's do hereby agree and contract as follows:

- The term of this Contract shall be for the following days and times:
September 14, 2017 **6:00 pm to 11:00 pm**
September 15, 2017 **6:00 pm to 12:00 am midnight**
September 16, 2017 **12:00 pm to 12:00 am midnight**
- The hours of operation of the Event shall be those scheduled by Addison. Chamberlain's shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage Sales</u>
Thursday, September 14, 2017	11:00 pm	10:00 pm
Friday, September 15, 2017	Midnight	11:00 pm
Saturday, September 16, 2017	Midnight	11:00 pm
Sunday, September 17, 2017	6:00 pm	5:00 pm

- Chamberlain's agrees that no representations have been made by Addison or any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Chamberlain's shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Chamberlain's for any claims for damages.
- Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Chamberlain's hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Chamberlain's shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Chamberlain's shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Chamberlain's understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Marriott Quorum, Crowne Plaza, Taste of Cuba and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
6. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of credit card, debit card, cash through Chamberlains Point of Sale (POS) or Tasty Buck tickets furnished by Addison. Patrons shall purchase seating reservations from Chamberlains personnel and redeem them in Chamberlain's tent(s). No later than (3) days after the close of the Event, Chamberlain's shall present to Addison a batch report from Chamberlains point of sales system and all Tasty Buck tickets received during the Event. Prior to presentation to Addison, Chamberlain's shall remove all stubs and staples from the Tasty Buck tickets. Separate 2017 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets and POS documentation, Addison shall issue a check to Chamberlain's in the amount of eighty-five percent (85%) of the face value of the sales made and tickets turned in, and Addison shall retain fifteen percent (15%) of the face value of sales and tickets sold. Such check shall be mailed to Chamberlain's within thirty (30) working days after the presentation of tickets to Addison.
7. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non- alcoholic beverages that the Chamberlain's shall offer for sale in their tent(s). Chamberlain's shall sell no non-alcoholic beverages other than those furnished by such sponsor. Chamberlain's shall purchase the Coke products directly from Coke.
8. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesn, Oktoberfest Märzen and Hefe-Weizen for the Chamberlain's to sell in their tents at the Event. Chamberlain's shall purchase the beverages directly from Ben E. Keith Distributing. Chamberlain's may also purchase souvenir items from Ben E. Keith Distributing. Chamberlain's shall be solely responsible for payment of beer and souvenir items sold at the Event and Addison shall not in any way be responsible for payment of beer or souvenir items. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Chamberlain's at the Event. Addison will provide Chamberlains with 1000 Paulaner 1 Liter glass beer steins. Chamberlains shall return any unused steins to Addison.
9. Addison shall furnish whatever tents, tables and chairs, bandstand, dance floor, utilities, lighting and fans it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
10. Chamberlain's shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
11. During the course of the Event, Chamberlain's shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Chamberlain's for patrons in a clean and sanitary condition. Chamberlain's shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

12. Chamberlain's agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Chamberlain's or anyone working under or for Chamberlain's.
13. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Chamberlain's. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Chamberlain's shall remain liable for such operations and conduct.
14. Chamberlain's agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
15. Chamberlain's agrees to and shall indemnify Addison, Texas, its officials, officers, employees and agents against, and hold Addison, its officials, officers, employees and agents harmless from, any and all claims, actions, causes of action, lawsuits, liability, judgments, damages, injuries, penalties, losses, costs or expenses (including reasonable attorney's fees, all court or arbitration or other dispute resolution costs, and costs of defense), for personal injury (including without limitation, sickness, emotional and psychological injury, disease or death), damage to or destruction of any property (including, without limitation, loss of use of property not otherwise physically damaged), breach of contract, breach of the insurance requirements set forth in Section 21 of this Contract, or any other harm for which recovery of damages is sought, suffered by any person or organization, that may arise out of any act or omission of Chamberlain's, its agents, officers and employees, including without limitation any such act or omission in breach of any of the terms or provisions of this Contract, or any negligent or strictly liable act or omission, in the performance or under the provisions of this Contract (including but not limited to the provision or serving of food, alcoholic beverages or music.) This indemnity is intended to protect Addison, its agents, officers and employees. The provisions of this paragraph shall survive the termination of this Contract.

Chamberlain's, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person that may be caused, in whole or in part, by the act or failure to act of Addison, its officers, agents or employees. Chamberlain's, its officers, agents and employees assume the risk of all conditions, whether dangerous or otherwise, in and about their tents, and waive any and all specific notice of the existence of any defective or dangerous condition in or about their tents. The provisions of this paragraph shall survive the termination, completion, or expiration of this Contract.

16. Chamberlain's hereby releases Addison from any actions for any loss or damage sustained by reason of any defect of any part of the water supply system, the sewage and drainage system, the gas system, electrical apparatus or wiring on the Event site or tent(s) or any other premises or band stand, and for any loss or damage resulting from fire, theft, water, tornado, rain, snow, strikes, civil commotion or riot, or otherwise, unless caused by the gross negligence of Addison.
17. Addison assumes no responsibility for any property placed on the premises, and Chamberlain's hereby releases Addison, its officials, officers, employees and agents from any and all liability for any loss, injury or damages to person or property that are sustained by reason of the occupancy of the Event site under this Contract. All watchmen or other protective service desired by Chamberlain's must be arranged for by special agreement with Addison.
18. Chamberlain's may begin set up for the Event on **Tuesday, September 12, 2017 after 10:00**

a.m. All property of Chamberlain's shall be removed from the Event site on or before **Monday, September 18, 2017 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Chamberlain's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is authorized to remove from the premises and store, without resorting to any legal proceeding and at the sole expense of Chamberlain's, all property occupying a portion of the Chamberlain's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Chamberlain's shall deliver the Chamberlain's tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

19. For purposes of this Contract and at all times during the Event, Chamberlain's shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):

a) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.

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

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

d) Other Provisions.

1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.

2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.

3. The Chamberlain's is solely responsible for maintaining insurance coverage on its personal property.

4. In the event that the Chamberlain's in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Chamberlain's shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Chamberlain's and the City as additional insureds:

(a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations,

and Liquor Liability.

- (b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Chamberlain's and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Chamberlain's may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
 - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
 - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
 - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
 - (b) The policy must include a Service of Suit Endorsement.

- (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. 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.
- b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Chamberlain's shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Chamberlain's, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

- 20. This Contract does not include the use of broadcasting or television facilities or the use of the Chamberlain's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
- 21. Chamberlain's hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Chamberlain's may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Chamberlain's agrees not to sue Addison for any potential infringement thereof.
- 22. Chamberlain's shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **August 31, 2017**. Chamberlain's shall comply with any and all sign permit requirements for the display of such signs. Chamberlain's shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
- 23. Chamberlain's shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Chamberlain's tent(s), but must be parked in the designated area immediately after unloading.
- 24. Chamberlain's agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Chamberlain's agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
- 25. Addison may designate certain of its agents, officers or employees as inspectors and

Chamberlain's agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Chamberlain's on the premises. Chamberlain's shall give the inspectors free access to any space used by Chamberlain's or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Chamberlain's on the premises, or operate any process or activities carried on by Chamberlain's. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Chamberlain's or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.

26. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Chamberlain's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Chamberlain's tent(s), and Chamberlain's waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.
27. Failure by the Chamberlain's to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Chamberlain's shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Chamberlain's acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
28. Chamberlain's acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
29. This Contract contains the entire agreement of Chamberlain's and Addison and may not be amended, modified or altered without the express written consent of Addison and the Chamberlain's.
30. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
31. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
32. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this 1st day of August, 2017.

TOWN OF ADDISON, TEXAS

By _____

Title _____

**VENDOR: Prime Steak Management, Inc.,
DBA, CHAMBERLAIN'S BRAU HAUS**

By *Jennifer Boucher*

Title *Event Coordinator*