

**ORDINANCE NO. 095-018**

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AS HERETOFORE AMENDED, SO AS TO GRANT A SPECIAL USE PERMIT FOR A RESTAURANT AND A SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION, ON APPLICATION FROM TONY TAHERZADEH, LOCATED AT 14833 MIDWAY ROAD, SUITE 105, ADDISON, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED IN THE BODY OF THIS ORDINANCE; PROVIDING FOR SPECIAL CONDITIONS; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR NO SEVERABILITY CLAUSE; AND PROVIDING FOR A REPEAL CLAUSE

WHEREAS, application was made to amend the Comprehensive Zoning Ordinance of the Town of Addison, Texas, by making application for the same with the Planning and Zoning Commission of the Town of Addison, Texas, as required by State Statutes and the zoning ordinances of the Town of Addison, Texas, and all the legal requirements, conditions and prerequisites having been complied with, the case having come before the City Council of Addison, Texas, after all legal notices, requirements, conditions and prerequisites having been complied with; and

WHEREAS, the City Council of the Town of Addison, Texas, does find that there is a public necessity for the zoning change, that the public demands it, that the public interest clearly requires the amendment, and it is in the best interest of the public at large, the citizens of the Town of Addison, Texas, and helps promote the general welfare and safety of this community.

Now, therefore,

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

SECTION 1. The Comprehensive Zoning Ordinance of the Town of Addison, Texas, as heretofore amended, be amended, by amending the zoning map of the Town of Addison, Texas, so as to grant a special use permit for a restaurant without drive-in service (service to be provided entirely within the building) and a special use permit for the sale of alcoholic beverages for on-premises consumption to Tony Taherzadeh. Said special use permits shall be granted subject to the special conditions on the following described property, to-wit:

BEING a 6,612 square feet lease space, addressed as 14833 Midway Road, Suite 105 located in a shopping center known as Midway Square, located on Lot 1, Block 1, Midway Square Addition, a tract of land situated in the THOMAS L.

CHENOWETH SURVEY, ABSTRACT NO. 273 in the Town of Addison, Dallas County, Texas and being a portion of a tract of land conveyed in deed recorded in Volume 408, Page 759 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at an "X" found in concrete at the intersection of the westerly line of MIDWAY ROAD (a 100 foot right-of-way) and the southerly line of BELTWAY DRIVE (a 60 foot right-of-way);

THENCE South  $00^{\circ}14'00''$  West, along the westerly line of said MIDWAY ROAD 985.14 feet to a 1/2" iron rod found;

THENCE North  $89^{\circ}28'25''$  West, leaving the westerly line of said MIDWAY ROAD 192.00 feet to a 1/2" iron rod found;

THENCE North  $00^{\circ}31'35''$  East, 217.36 feet to a 1/2" iron rod found;

THENCE North  $89^{\circ}28'25''$  West, 679.42 feet to a 1/2" iron rod found;

THENCE North  $00^{\circ}11'48''$  West, 640.87 feet to a 1/2" iron rod found in southerly line of said BELTWAY DRIVE;

THENCE South  $89^{\circ}52'42''$  East, along the southerly line of said BELTWAY DRIVE, 63.08 feet to a 1/2" iron rod found, said iron rod also being the point of curvature of a tangent curve to the left having a radius of 1,005.00 feet and a chord which bears North  $83^{\circ}31'34''$  East, a chord distance of 230.87 feet;

THENCE northeasterly along the said curve to the left and the southerly line of said BELTWAY DRIVE through a central angle of  $13^{\circ}11'28''$ , and arc distance of 231.88 feet to a 120d nail found;

THENCE South, leaving the southerly line of said BELTWAY DRIVE, 151.29 feet to a 60d nail found;

THENCE South  $89^{\circ}57'52''$  East, 385.01 feet to an "X" found in concrete;

THENCE North 242.62 feet to a 120d nail found in the southerly line of said BELTWAY DRIVE, said nail also being the point of curvature of a non-tangent curve to the right having a radius of

945.00 feet and a chord which bears North 88°05'28" East, a chord distance of 68.15 feet;

THENCE northeasterly along the said non-tangent curve and the southerly line of BELTWAY DRIVE to the right through a central angle of 04°07'59", a distance of 68.17 feet to a 1/2" iron rod found;

THENCE South 89°52'23" East, along the southerly line of said BELTWAY DRIVE, 120.00 feet to the POINT OF BEGINNING and containing 13.124 acres or 571,665 square feet of land, more or less.

SECTION 2. That the Special Use Permits are granted subject to the following conditions:

1. That prior to the issuance of a Certificate of Occupancy, said property shall be improved in accordance with the site plan, floor plan, landscape plan, irrigation plan, and the elevation drawings showing four exterior walls, which are attached hereto and made a part hereof for all purposes.
2. That the Special Use Permit granted herein shall be limited to a restaurant without drive-in service and the sale of alcoholic beverages for on-premises consumption only and to that particular area designated on the final site plan as encompassing a total area not to exceed 6,612 square feet.
3. No signs advertising sale of alcoholic beverages shall be permitted other than those authorized under the Liquor Control Act of the State of Texas, and any sign ordinance of the Town of Addison, Texas.
4. That the sale of alcoholic beverages under this special use permit shall be permitted in restaurants. Restaurants are hereby defined as establishments which receive at least sixty percent (60%) of their gross revenues from the sale of food.
5. Said establishment shall make available to the City or its agents, during reasonable hours its bookkeeping records for inspection, if required, by the City to insure that the conditions of Paragraph 4 are being met.
6. The use of gaming devices, such as billiards (pool) tables, pinball machines, marble tables, and other coin operated amusement machines, other than machines for music are hereby prohibited.
7. Any use of property considered as a nonconforming use under the Comprehensive Zoning Ordinance of the Town of Addison shall not be permitted to receive a license or permit for the sale of alcoholic beverages.

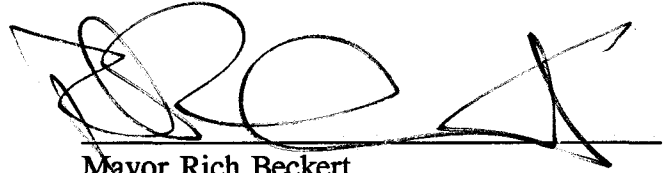
8. That if the property for which the special use permit is granted and is not used for the purposes for which said permit was granted within one (1) year after the adoption of this ordinance, the City Council may authorize hearings to be held for the purpose of considering a change of zoning.
9. That if a license or permit to sell alcoholic beverages on property covered by this special use permit is revoked, terminated or canceled by proper authorities, the City Council may authorize hearings to be held for the purpose of considering a change of zoning.
10. The word "bar" shall not be used in or as a part of any sign on the property.
11. The owners of the real property described herein have voluntarily agreed to restrict the use of the real property described herein through the recording of certain restrictive covenants attached to and running with the real property. The said restrictive covenants reserve to the City the right to review the granting of the special use permits provided for herein upon the giving of written notice in accordance with law and the compliance with all public hearing requirements to rezone the real property, and to remove the special use permits, or either or them, from the property and the use of the real property as a restaurant or the sale of alcoholic beverages for on-premise consumption. A true and correct copy of the said voluntary restrictive covenants is attached hereto as Exhibit "A" and incorporated herein.
12. In the event that music is played in conjunction with a business operated on the property, such music shall not be audible beyond the boundary lines of the property.

SECTION 3. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the city, as heretofore amended, and upon conviction shall be punished by a fine set in accordance with Chapter 1, General Provisions, Section 1.10, General penalty for violations of Code; continuing violations, of the Code of Ordinances for the Town of Addison.

SECTION 4. It is the intention of the City Council that this ordinance be considered in its entirety, as one ordinance, and should any portion of this ordinance be held to be void or unconstitutional, then said ordinance shall be void in its entirety, and the City Council would not have adopted said ordinance if any part or portion of said ordinance should be held to be unconstitutional or void.

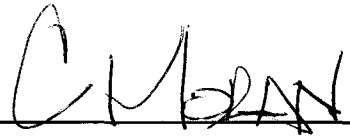
SECTION 5. That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS,  
on this the 9th day of May, 1995.



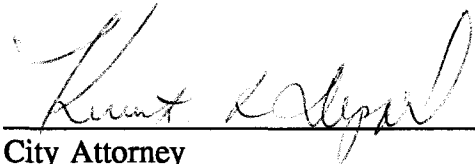
\_\_\_\_\_  
Mayor Rich Beckett

ATTEST:



\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:



\_\_\_\_\_  
City Attorney

Published  
9/21/95

DEED RESTRICTIONS

THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

KNOW ALL PERSONS BY THESE PRESENTS:

DEED 17.00  
TSTL 17.00  
4001 3974 0000000 4939 4:22PM 5/16/95

I.

The undersigned, Gene McCutchin, an individual ("the Owner"), is the owner of the following described property ("the Property"), being in particular a tract of land at 14833 Midway Road, Suite 105, in the Thomas Survey, Abstract No. 273, in the Town of Addison ("City"), Dallas County, Texas, and being a portion of the tract of land known as Lot 1, Block 1 of Midway Square, an addition to the Town of Addison, Texas, and being more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes.

Owner has agreed to lease the Property to Tony Taherzadeh ("Lessee") for the purpose of the operation by the Lessee of a restaurant. In conjunction with that lease, Owner has submitted a request to the Town of Addison, Texas for a change in zoning on the Property by the granting of a special use permit for a restaurant (without drive-in service) and a special use permit for the sale of alcoholic beverages for on-premise consumption (together, the "Special Use Permits"), and in connection therewith has agreed to voluntarily file these Deed Restrictions. Owner does hereby acknowledge and agree that these Deed Restrictions are reasonable and valid.

II.

The Owner does hereby impress all of the Property with the following deed restrictions ("restrictions"), to wit:

1. Improvement of the Leased Premises shall be in accordance with the attached site plan with no amendment of said site plan without prior written notice to and consent of the City.
2. Upon the assignment or the termination of the lease of the Property with Tony Taherzadeh, dated January 27, 1995 ("the Lease"), or upon any change of tenant of the Property ("the Tenant"), Owner shall notify the City in writing.
3. Upon the termination of the Lease or change of the Tenant, Owner waives any rights he might have under the Special Use Permits, including any and all claims of vested rights, non-conforming use, property rights and damages in relation to any rezoning of the Property, and Owner does hereby release, relieve, and forever discharge the City, members of the City Council, the Planning and Zoning

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Commission and all other officers, employees and agents of the City for any and all acts relative to the carrying out of any rights granted to the City under these Deed Restrictions.

4. Upon the termination of the Lease or change of the Tenant, Owner agrees to the calling of a hearing to determine appropriate zoning of the Property and further waives any objection to said process. In the event that the City does institute a zoning case on its own initiative and does adopt an ordinance rezoning the Property by removing the Special Use Permits, or either of them, from the zoning on the Property, Owner shall close and stop the use of the Property for a restaurant or the sale of alcoholic beverages, as the case may be, upon the change in zoning.

III.

These restrictions shall continue in full force and effect unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated only after public hearing before the Planning and Zoning Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

VI.

The Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court



costs. For further remedy, the Owner agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

The Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

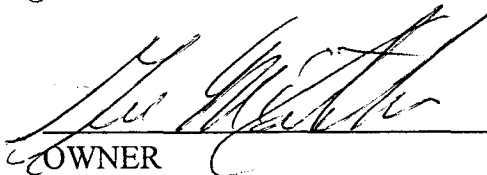
IX.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

X.

The invalidation of any provision of this instrument by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

EXECUTED this the 9<sup>TH</sup> day of May, 1995.

  
OWNER

By: Gene McCutchin

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APPROVED AS TO FORM:

KENNETH DIPPEL, City Attorney

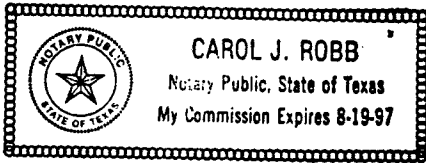
By: *Kenneth Dippel*  
Kenneth Dippel

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on May 9<sup>TH</sup>, 1995, by Gene McCutchin.

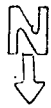
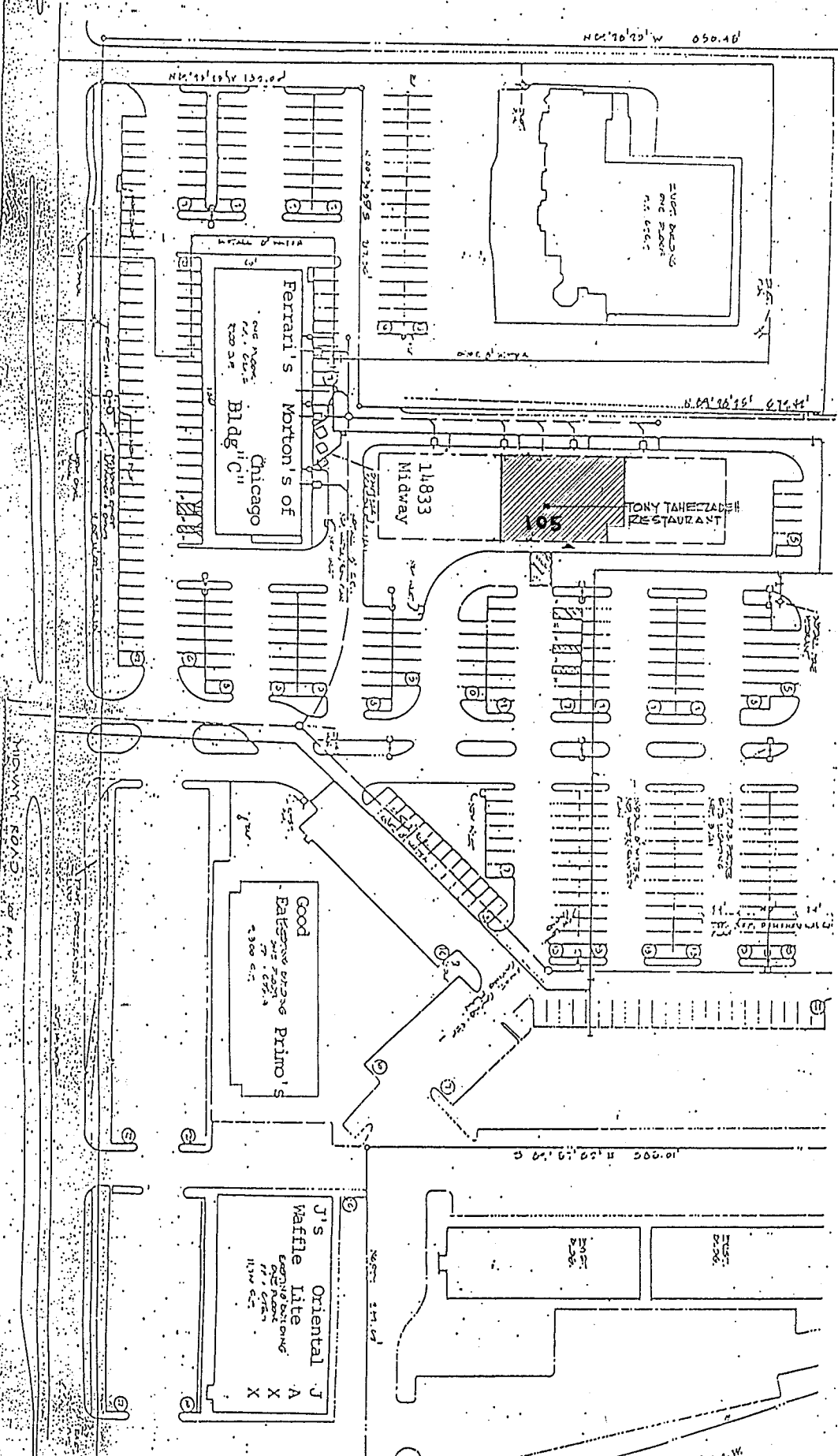
*Carol J. Robb*  
Notary Public in and for the State of Texas

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OFFICE IN THE PARK ADDITION

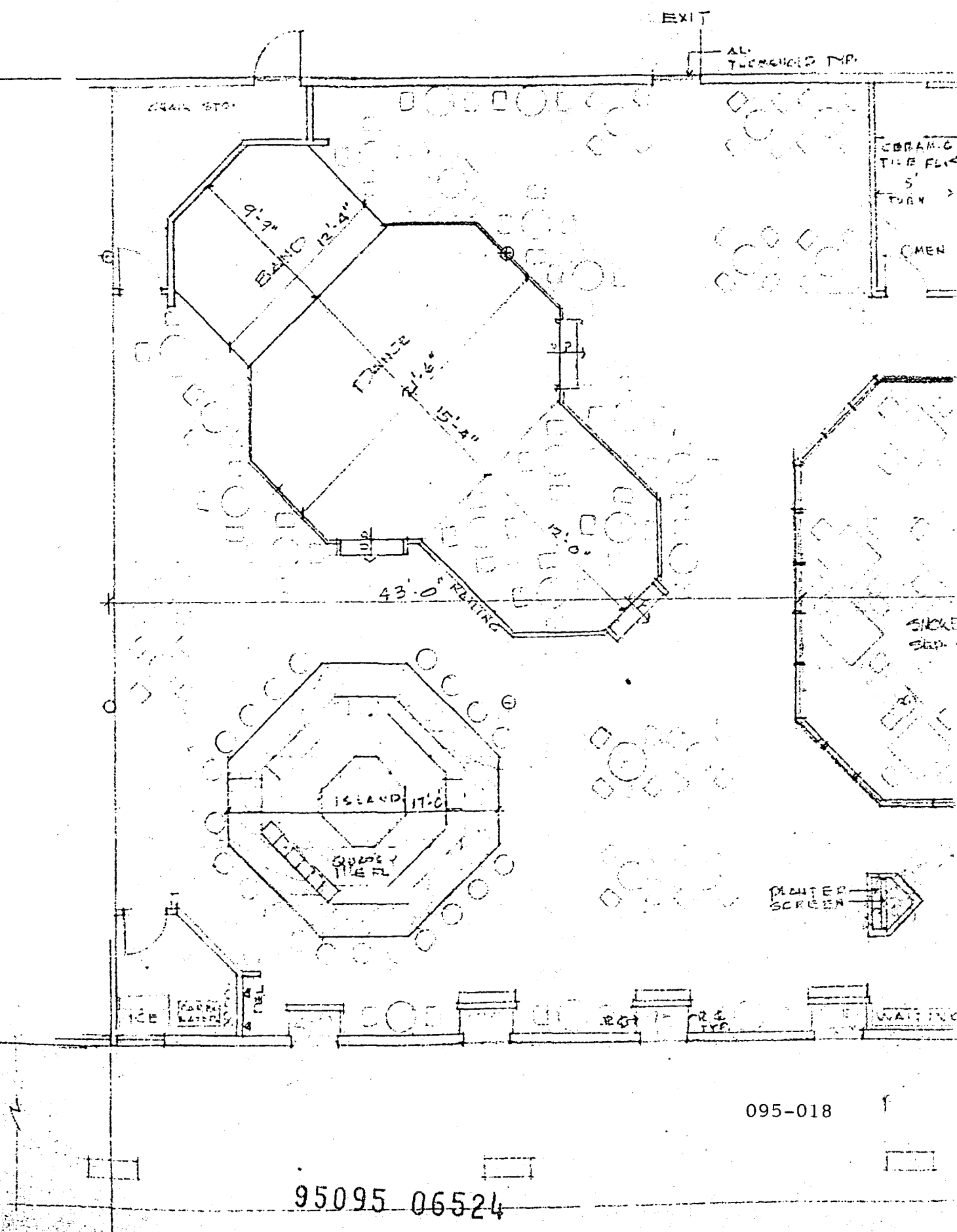


**MIDWAY SQUARE**  
 14833 Midway Road, Suite 105  
 Addison, Texas

EXHIBIT "A"



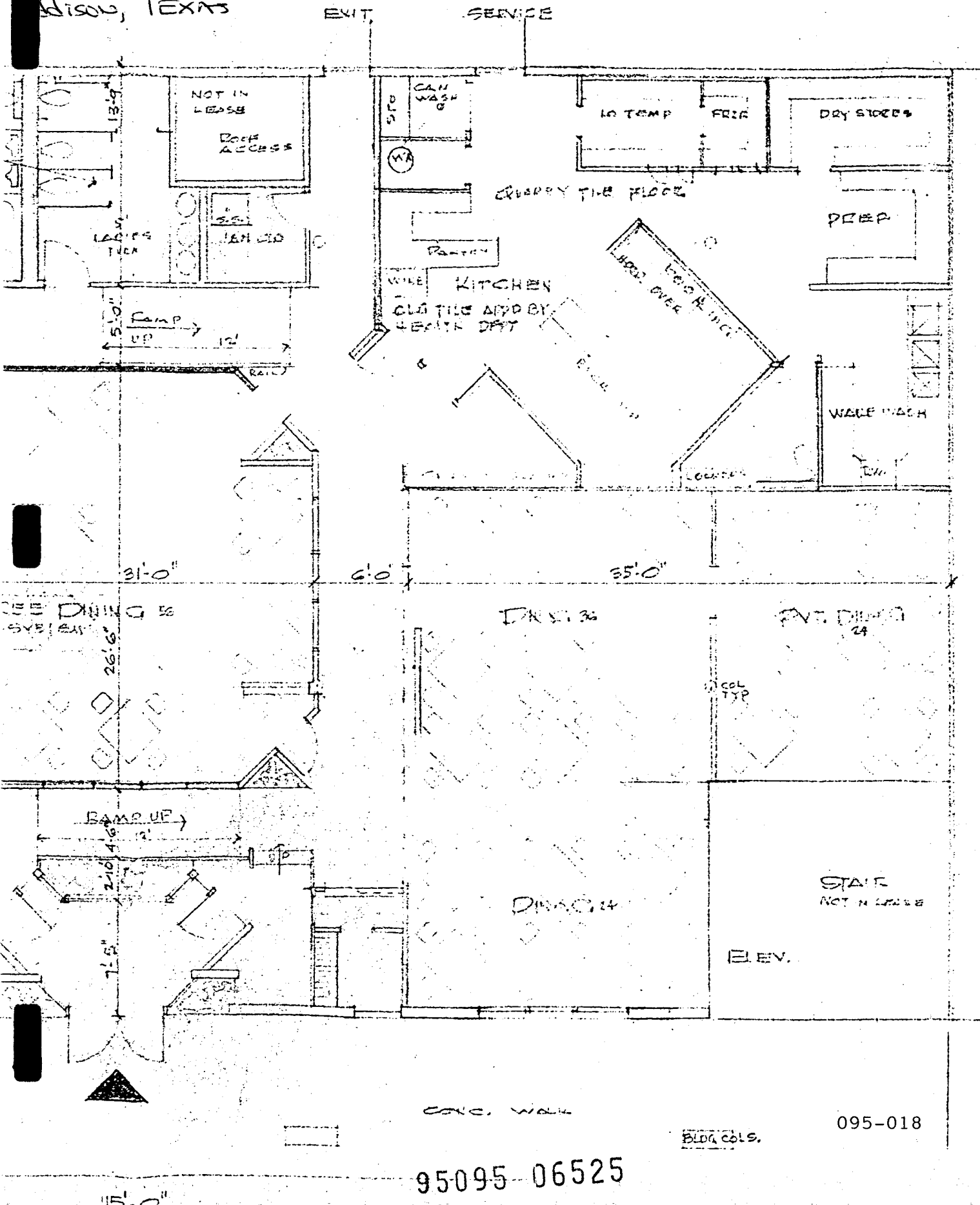
50'-0"



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Site Plan  
 Suite 105  
 14833 Midway Road  
 [Redacted] Madison, TEXAS



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095-018

BLDG COLS.

ELEV.  
 STAIR  
 NOT IN LEASE

CONC. WALL