

ORDINANCE NO. 096-037

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS APPROVING A STREET USE AND RENTAL AGREEMENT BY AND BETWEEN THE CITY AND ADDISON CIRCLE ACCESS, INC. IN ORDER TO PERMIT CERTAIN UTILITY SERVICES TO BE PROVIDED THROUGH A PRIVATELY-OWNED UTILITY SYSTEM.

WHEREAS, in conjunction with the development of the property contained in the area known as Addison Circle, Columbus Realty Trust and Gaylord Properties, Inc. are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

WHEREAS, Gaylord and Columbus, through Addison Circle One, Ltd. desire to permit certain utility services to the Property to be provided through a privately-owned utility system, such services including, but not being limited to, the transmission of electricity, natural gas, steam, video signals, audio signals, telephone signal and data; and

WHEREAS, Addison Circle Access will not be directly providing utility service but will, in accordance with the terms of this agreement, be assigning its rights, duties and obligations hereunder to private utility providers; and

WHEREAS, Section 16-39 of the City's Code of Ordinances provides that a person desiring to use a public street for a private utility use must first obtain a license from the City authorizing such use; and

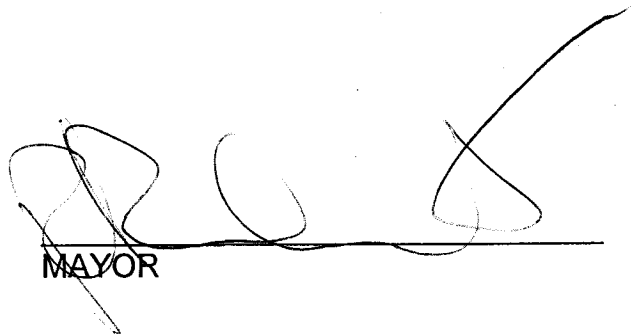
WHEREAS, Section 16-41 of the Code provides that such a license must be granted by ordinance.

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

Section 1. The License Agreement by and between the City and the Company, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein, is hereby approved, subject to the final approval of the City Attorney. The City Manager is authorized to execute the Agreement on behalf of the City.

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

PASSED AND APPROVED by the City Council of the Town of Addison, Texas
this 23rd day of July, 1996.



MAYOR

ATTEST:



CITY SECRETARY

PUBLISHED ON:
OFFICE OF THE CITY SECRETARY

ORDINANCE NO. 096-037

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

EXHIBIT A
STREETS USE AND RENTAL AGREEMENT

This Streets Use and Rental Agreement is entered into this ____ day of _____, 1996 by and between the Town of Addison, Texas (the "City") and Addison Circle Access, Inc., a Texas corporation ("Grantee").

RECITALS

WHEREAS, Addison Circle One, Ltd., a Texas limited partnership (the "Partnership"), is the owner of certain real property described in Exhibit A attached hereto and incorporated herein ("Phase I"), and Gaylord Properties, Inc., a Texas corporation ("Gaylord") is the owner of certain real property adjacent to Phase I described in Exhibit B attached hereto and incorporated herein (the "Gaylord Property"; Phase I and the Gaylord Property are hereinafter collectively referred to together as the "Property"); and

WHEREAS, Columbus Realty Trust, a Texas real estate investment trust ("Columbus") and Gaylord are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

WHEREAS, Columbus and Gaylord are the sole shareholders of Grantee; and

WHEREAS, in conjunction with the development of the Property, Columbus and Gaylord desire to permit certain utility services to the Property to be provided through a privately-owned utility system, such services including, but not being limited to, the transmission of electricity, natural gas, steam, video signals, audio signals, telephone signals and data; and

WHEREAS, Grantee will not be directly providing utility service but will, in accordance with the terms of this Agreement, be assigning its rights, duties and obligations hereunder to private utility providers.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and Grantee do hereby contract and 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 for all purposes.

Section 2. Definitions. For the purpose of this Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. O96-037

- A. "Affiliate" means a corporate parent of either Gaylord or Columbus owning more than 50% of the shares of Gaylord or Columbus, a partnership or joint venture in which Gaylord or Columbus owns an interest of more than 50%, or a subsidiary entity of Gaylord or Columbus in which Gaylord or Columbus own a more than 50% interest.
- B. "Agreement Date" means the _____ day of _____, 1996.
- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of Gross Revenues received by Grantee or any private utility provider during the year from the operation of the System.
- D. "Cable television system" means a system of antennae, cables, wires, lines, towers, satellites, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the Property.
- E. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- F. "Company" or "Grantee" shall mean Access and its successors and assigns.
- G. "Compensation Year" means each calendar year during the term of this Agreement in which General Compensation is paid by Grantee to the City.
- H. "Day or days" shall mean a calendar day or days.
- I. "General Compensation" means the amount Grantee is required to pay City under Section 9.B. of this Agreement.
- J. "Gross Revenue" shall mean all receipts collected and revenue received by the Grantee and any private utility provider for all utility operations and services within the Property as well as any other revenue arising from the operation or possession of this Agreement. By way of example:
 - (1) With respect to telephone utility service and without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to Grantee by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties;
 - (2) With respect to cable television service and without limitation, "Gross Revenue" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Grantee, arising from or

attributable to operation within the Property of the cable television system, including not limited to:

- (a) revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including leased access fees);
- (b) revenue from all charges for the insertion of commercial advertisements upon the cable television system;
- (c) revenue from all charges for the leased use of studios located on the Property;
- (d) revenues from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable television system and the provision of subscriber and other services;
- (e) the sale, exchange or use or cablecast of any programming developed for community use or institutional users; and
- (f) revenue from any and all data transmission and telecommunication.

Gross Revenue does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursement.

- K. "Private utility provider" means the holder of a license or right from Grantee to provide utility service as set forth in Section 16.A. hereof.
- L. "Property" means Phase I and the Gaylord Property, as described in the premises above.
- M. "System" means the utility system installed or acquired and maintained by the Grantee or a private utility provider as described in Section 3 of this Agreement.

Section 3. Grant of Certain Rights. The City hereby grants to Grantee the non-exclusive right and privilege to construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under those public streets, alleys and rights-of-way within the Property, a System for certain utility services including, but not limited to, the transmission of electricity, natural gas, steam, video signals (e.g. cable television system), audio signals, telephone signals and data. Grantee shall not provide services directly regulated by the Texas Public Utility Commission ("PUC"), the Texas Natural Resources Conservation Commission ("TNRCC"), or any other applicable state or federal commission or agency, unless authorized by the PUC, the TNRCC, other state or federal commission or agency, state or federal law. This grant is made to Grantee solely for the purpose of directly serving its end-user customers.

Section 4. Construction, maintenance, expansion, reconstruction, and excavation.

A. The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System and other property used in connection therewith shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, at least thirty (30) days prior to the commencement of construction or maintenance within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

B. Upon request of the City, Grantee shall remove and abate any portion of the System that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the System.

C. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this Agreement. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

D. Within thirty (30) days of completion of each segment of the System, Grantee shall supply the City with a complete set of "as built" drawings for that segment, shall keep a copy of all "as built" drawings at a location within the Property and shall notify the City of that location. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall obtain the City's approval before any system changes are made.

Section 5. Term of Agreement. Upon the filing with the City by the Grantee of the acceptance required herein, this Agreement shall be in full force and effect for a term and period of twenty (20) years, beginning on the Agreement Date. This Agreement shall be automatically renewed for one subsequent twenty (20) year period unless either party shall file at least ninety (90) day prior written notice of cancellation to the other.

Section 6. Construction work regulation by City and underground conduit used by City.

A. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place the System facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such future requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

B. Subject to reasonable availability and agreement between the parties concerning maintenance, access and security, Grantee may be required by the City to construct portions of the System, or all of the System, underground, or to share duct trench space owned and maintained by any other person or entity upon reasonable, non-discriminatory terms and at fair market value. The intent of this section is to encourage shared use of the infrastructure and decrease excavation of the City's rights-of-way.

C. Any facilities of other persons or entities that are attached to or within the System facilities shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the System or other persons or entities using the System. Grantee shall not be required to share trench space with any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

Provided, however, nothing herein shall modify or abrogate the power of the City to require the Grantee or any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise or street rental agreement pursuant to the City Charter.

Section 7. Work by others, construction by abutting owners, alteration to conform with public improvement.

A. The City reserves the right to lay and permit to be laid, sewer, gas, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk

or the grade of any street or other public right-of-way. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully or directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's System. All work performed will be in accordance with the City manual for Utility Location and Coordination.

B. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of the System, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

C. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of the System thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its System facilities entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its System facilities, or to alter, relocate or change its System facilities to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its System facilities, or in any way or manner to alter, relocate or change its System facilities to enable any other entity or person, except for the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which may be caused by, or arise out of such change, alteration or relocation of the System facilities; provided, however, that the City shall never be liable for such reimbursement.

D. In the event that Grantee has not relocated those of its affected System facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction or reconstruction, the City shall have the right to relocate or cause to be relocated the affected portion of the System, and the Grantee shall reimburse the City for all costs of relocation.

E. During the term of this Agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an Affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operation of the System as if the acts or omissions of such entity were the acts or omissions of Grantee.

Section 8. Compliance with City Charter.

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this Agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

Section 9. Compensation to the City.

A. *Acceptance Fee.* Upon the issuance of a certificate of occupancy for any phase or subphase of the Property, the Grantee agrees to pay a one time acceptance fee to the City in the sum of Two Dollars (\$2.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing; provided, however, that this acceptance fee shall not apply to any public street crossing occurring as a part of the initial construction of infrastructure in the development of such phase or subphase.

B. *General Compensation.* For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of the System within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the reservation to the Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as general compensation during each year of this Agreement and for each type of utility service (including but not limited to electric, gas, telephone and cable television) provided through and by the System facilities, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee shall be \$5,000.00.

C. *Calculation and Payment on a Quarterly Basis.* For each type of utility service provided by the Grantee by and through the System, Grantee shall pay to the City for each calendar quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

D. *Recalculation at end of Compensation Year.* At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said

amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. In addition to the definition of "Gross Revenues" set forth in Section 2 above, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of utilities provided by and through the System installed pursuant to this Agreement, and any related services (as may be applicable) provided by the Grantee within the Property including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis;
- (ii) all telecommunications services charged on a usage sensitive or mileage basis;
- (iii) all revenues from installation service charges;
- (iv) all revenues from connection or disconnection fees;
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
- (vi) all revenues from equipment sold or rented to customer upon customer premises;
- (vii) all revenues from local service;
- (viii) all revenues from authorized rental of conduit space;
- (ix) all revenues from authorized rentals of any portion of the System, including plant, facilities, or capacity leased to others;
- (x) unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise.

Grantee shall file annually with the City's Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) for each type of utility service provided attributable to the operations of the System pursuant to this Agreement. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by a certified public accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

Section 10. Accounts and other records and reports and investigations.

A. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of the System, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

B. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 9.

In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 9, it will file with the City Secretary a sworn copy of a report in a form to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 9. The City may, if it sees fit, have the books and records of Grantee examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

C. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

D. Grantee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, and review Grantee's books, accounts, documents, maps, plans and other records pertaining to this Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

E. The City may, at any time, make inquiries pertaining to the operation of the System, and Grantee shall respond to such inquiries on a timely basis.

F. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission, Texas Public Utility Commission, Texas Natural Resources Conservation Commission, other relevant commission or agency, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or

the utility operations authorized pursuant to this Agreement. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

Section 11. Rules and regulations.

A. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operation of the System.

B. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

C. The City reserves the right to regulate the rates, charges and fees of Grantee as the City may be now or hereafter authorized or empowered to so regulate after notice and hearing to Grantee.

Section 12. Insurance.

A. Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of the execution of this Agreement. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof, and to adjust insurance coverage and their limits when reasonably deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

B. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	TYPE	AMOUNT
(1)	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
(2)	Commercial General (public) Liability - to include coverage for the following where the exposure exists:	

- (a) Premises operations
 - (b) Independent contractors
 - (c) Products/completed
 - (d) Personal injury
 - (e) Contractual liability
 - (f) Explosion, collapse and underground property damage
- Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
- (3) Comprehensive automobile insurance coverage for loading and unloading hazards, for:
- (a) Owned/leased automobiles
 - (b) Non-owned automobiles
 - (c) Hired automobiles
- Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent

C. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

D. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (1) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (2) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (3) Provide for notice to the Director of Finance by certified mail; and
- (4) Provide that all provisions of the Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity of this Agreement, shall be

underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

F. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

G. The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.

H. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

Section 13. Indemnity by Grantee. Grantee 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, 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 Grantee, its officers, employees, agents, contractors, assignees, licensees, permittees, or subcontractors under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

Section 14. Violations. If the City has reason to believe that Grantee is in violation of this Agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within thirty (30) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this Agreement, any City Charter provisions, or any ordinances lawfully regulating Grantee in the construction and operation of its System is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this Agreement and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including (a) forfeiture of this Agreement in the event of a substantial breach

under Section 15, and (b) a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

Section 15. Termination.

A. In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure provided in Section 14, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the Agreement or any material rule, order, regulation or determination of the City made pursuant to this Agreement;
- (2) Grantee's failure to properly compensate the City as required in this Agreement;
- (3) Grantee's attempt to evade any material provision of the Agreement or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;
- (4) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement without City Council approval, except as may be permitted by this Agreement;
- (5) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner; or
- (6) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the Agreement to Grantee.

B. This Agreement and the easements created hereunder may be terminated in the event Grantee abandons the use of the public rights-of-way for the purposes set forth herein. Such abandonment may be evidenced by notice from Grantee stating that Grantee is abandoning, as of the date set forth in the notice, this Agreement and the easements created hereunder.

Section 16. Miscellaneous.

A. Assignment; successors.

(1) Grantee shall have the right to license or otherwise permit private utility providers use of the rights, privileges, duties and obligations granted to and assumed by Grantee pursuant to this Agreement, provided that issuance of any such license or permit or other method of conveyance of any rights or obligations hereunder shall not release or relieve Grantee of its obligations to the City pursuant to this Agreement and shall be subject to the following:

(a) No such license, permit, or other method of conveyance of any of the rights and obligations hereunder shall be effective until such time as the same has been approved by the City Council or the City Manager, which approval shall not be unreasonably withheld.

(b) Any such license, permit, or other method of conveyance shall provide that the holder thereof shall comply with and be subject to all terms and conditions of this Agreement.

(2) Except as provided in paragraph A(1) of this Section 16, neither this Agreement, the assets held by Grantee for use under this Agreement, any rights or privileges of Grantee under this Agreement, Grantee's capacity in the System, or allowance of access to the System, either separately or collectively, shall be sold, resold, assigned, transferred or otherwise conveyed by Grantee to any other person or firm, except an Affiliate, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this Agreement or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this Agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the City. Grantee may assign this Agreement to an Affiliate during the term of this Agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement, the agreement purchased shall be canceled and merged into one or the other agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this Agreement, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material or substantial breach and, in accordance with Section 15, revoke this Agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

B. Force Majeure. In the event either the City or Grantee 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, hinderance 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 144
Addison, Texas 75001

Attn: City Manager

To Grantee:

15851 Dallas Parkway
Suite 855
Dallas, Texas 75248

Attn: President

D. *Governing Law; Venue.* This 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 agreement are performable in Dallas County, Texas. Venue for any action under this 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 Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

F. *Entire Agreement.* This Assignment Agreement represents the entire and integrated agreement between the City and Grantee relative to encroachments into the public rights-of-way as described herein 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 Grantee.

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 Street 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

ADDISON CIRCLE ACCESS INC.

By: _____
Ron Whitehead, City Manager

By: _____

Its: _____

ATTEST:

By: _____
Carmen Moran, City Secretary

EXHIBIT A

**LEGAL DESCRIPTION OF
ADDISON CIRCLE PHASE I**

EXHIBIT B

**LEGAL DESCRIPTION OF
ADDISON CIRCLE PHASE I**