

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R09-006

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CONSENTING TO THE ASSIGNMENT OF A LICENSE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF A TELECOMMUNICATIONS CABLE UNDER SURVEYOR BOULEVARD; RECITING THE TERMS AND CONDITIONS UPON WHICH CONSENT TO THE ASSIGNMENT IS GIVEN; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 8, 2004 the Town of Addison, Texas (the "City") previously entered into an agreement entitled "License Agreement" (and so called herein, a true and correct copy of which is attached hereto as Exhibit A) with Barrett Burke Wilson Castle Daffin & Frappier, L.L.P., a Texas limited liability partnership ("Barrett Burke"), in which the City granted to Barrett Burke a nonexclusive, revocable license to construct, reconstruct, maintain and operate one four (4) inch conduit containing both fiber and copper cable under Surveyor Boulevard for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Boulevard and 4004 Belt Line Road, Forum II, Suite 100, within the City (the "Properties"); and

WHEREAS, Barrett Burke, now known as Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership ("Barrett Daffin"), the tenant of the Properties, has assigned its interest as tenant in the Properties to National Default Exchange Holdings, L.P., a Delaware limited partnership ("National Default"); and

WHEREAS, having assigned its tenancy interests in the Properties to National Default, Barrett Daffin desires to assign its interest in the License Agreement to National Default in accordance with that Assignment and Assumption of License by and between Barrett Daffin and National Default, a true and correct copy of which is attached hereto as Exhibit B (the "Assignment Agreement"); and

WHEREAS, Section 11 of the License Agreement provides that Barrett Burke may assign, transfer, or otherwise convey its rights in the License Agreement with the express prior written consent of the City, which consent is to be evidenced by ordinance or resolution of the City that recites the terms and conditions, if any, upon which the City's consent is given; and

WHEREAS, the City desires by this Resolution to consent to the Assignment Agreement, subject to the terms and conditions set forth herein.

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

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

Section 2. Consent to Assignment; Conditions.

A. Subject to the terms, conditions and provisions of this Resolution, the Town of Addison, Texas hereby consents to the assignment of the rights, duties, liabilities, and obligations of Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership (as licensee under the License Agreement) to National Default Exchange Holdings, L.P., a Delaware limited partnership, as set forth in the Assignment and Assumption of License attached hereto as Exhibit B. In consenting to such assignment, the City is relying upon the statements and representations made by Barrett Daffin and by National Default in the Assignment Agreement.

B. This consent is given subject to the following:

A. The City does not waive any of its rights under the License Agreement as to National Default. The City hereby releases Barrett Daffin from its obligations under the License Agreement from and after the effective date and time of the Assignment Agreement; provided, however, that, notwithstanding the foregoing, the City does not release or waive any rights or claims as to any covenants, obligations, liabilities, duties or responsibilities of Barrett Daffin under the License Agreement prior to the said effective date and time of the Assignment Agreement, and Barrett Daffin shall be and remain fully liable and responsible for all of its obligations and duties under the License Agreement and for all of its acts and omissions in connection therewith, related thereto, or which arose or have their inception prior to the effective date and time of the Assignment Agreement.

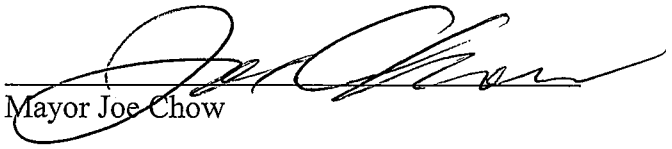
B. Notwithstanding any provisions of this Resolution or the Assignment Agreement to the contrary, this consent shall not operate as a waiver of any prohibition against further assignment, transfer, or other conveyance of the License Agreement without the City's express prior written consent.

C. The consent shall be effective only upon the execution by the City, Barrett Daffin and National Default of an amendment to the License Agreement in substantially the form and content as set forth in that Amendment to License Agreement attached to this Resolution as Exhibit C (the "Amendment").

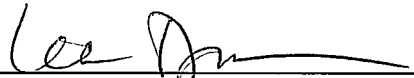
D. This consent shall be and remain valid only if and provided that, by no later than 5:00 o'clock p.m. CST on Friday, March 13, 2009, (i) the Assignment Agreement has been executed by both Barrett Daffin and National Default and an original of the same has been delivered to the Town of Addison, Town Hall, 5300 Belt Line Road, Dallas, Texas 75254, (ii) the Amendment has been executed by an authorized representative of Barrett Daffin and National Default, and a fully executed copy of the same has been delivered to the Town of Addison at the same address. Otherwise, this Consent shall be null and void as if it had never been given and executed.

Section 3. Effective Date. This Resolution shall be in effect from and after its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 10th day of March, 2009.


Mayor Joe Chow

ATTEST:

By: 
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: 
John Hill, City Attorney

EXHIBIT A- License Agreement

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License" or "Agreement") is made this 8th day of JUNE, 2004, by and between the Town of Addison, Texas ("the City") and Barrett Burke Wilson Castle Daffin & Frappier, L. L. P., a Texas Limited Liability Partnership (the "Company"),

WHEREAS, Surveyor Blvd is a public street located within and under the authority and control of the City; and

WHEREAS, the Company leases two properties along Surveyor Blvd., which are generally described as 15000 Surveyor Blvd and 4004 Belt Line, Forum II, Suite 100 (the "Buildings") and which are depicted on EXHIBIT 1 attached hereto and incorporated herein; and

WHEREAS, the Company desires to install under Surveyor Blvd, a telecommunications cable connecting the two Buildings for the purpose of facilitating communication between the two Buildings; and

WHEREAS, Section 70-58 of the City's Code of Ordinances provides, among other things, that all persons that place facilities in, on, or over public rights-of-way must obtain a franchise, license or other authorization as may be required by the City to use the public rights-of-way; and

WHEREAS, the Company desires to place the Cable (as defined herein) under Surveyor Boulevard and has requested the City's issuance of its authorization to construct, maintain, and operate the same.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein and other good and valuable consideration, the City and the Company do hereby contract and agree as follows:

1. Grant of License. The City hereby grants to Company a nonexclusive, revocable license to construct, reconstruct, maintain and operate, subject to the terms and conditions of this Agreement, one four (4) four-inch conduit containing both fiber and copper cable (SEE specifications on **EXHIBIT 1** attached hereto and incorporated herein) (the "Cable"), under Surveyor Blvd. for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Blvd. and 4004 Belt Line Rd., Form II, Suite 100, Addison, Texas (together, the "Properties"). The telecommunication services which may be provided between and only between the Properties shall be and are limited to the following: audio, video, data, voice and signalling communications. The Cable shall be located as shown on **EXHIBIT 1**.

This license, the grant made herein, and the rights of the Company hereunder are subject and subordinate to: (a) the prior and continuing right of the City, its successors and assigns, to use all and any part of Surveyor Blvd., including without limitation the portion of Surveyor Blvd. in which the Cable is located, for any purpose whatsoever in the City's sole discretion; (b) any existing electric, gas, communication, cable, water, sewer, or other utility or drainage facility located in, on, under, or above Surveyor Blvd.; (c) existing rights of any utility, communication, or other person, company, or entity in or to Surveyor Blvd.; (d) any existing franchise, grant, license, lease, easement, or other interest heretofore granted or conveyed by the City; (e) all laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the City, or of any governmental entity or agency

having jurisdiction over Surveyor Blvd. or the use thereof; and (f) all of the terms and conditions of this Agreement.

2. Term. Subject to the terms and conditions of this Agreement, this License shall continue in force for a period of ten (10) years from the date of execution of this Agreement or earlier if terminated as provided hereinafter.

3. Identify Markers. Markers in a form and size satisfactory to the City shall be installed and constantly maintained by Company at the City's property lines or at such locations as the City may designate and shall be relocated or removed by Company upon request of the City. The absence of markers does not constitute a warranty or representation by the City that there are no subsurface installations, lines, cables, or other equipment, materials, or property. The Company shall be responsible for determining and locating all utility or other facilities, equipment or property that may be located in the area in which the Cable will be constructed, operated, and maintained, whether subsurface or otherwise.

4. Cost. As consideration for the license and rights granted herein, Company shall pay the City as follows:

(a) An acceptance fee in the amount of \$1.00 per linear foot of streets bored or traversed, and One Thousand Dollars (\$1,000.00) for each public street crossing, with such payment due on execution of this License; and

(b) An annual payment to the City in the amount of One Thousand and No/100 Dollars (\$1,000.00) payable in advance with the first payment due on execution of this License. Each annual payment thereafter shall be due on or before the anniversary date of this Agreement until the expiration of this License or this License is otherwise terminated as provided herein. Company shall bear the entire cost of construction, reconstructing, maintaining and operating the

Cable, and will not allow or permit any mechanic's, materialman's, or other liens to be enforced against the City's property by reason of any such work, and agrees to and shall indemnify the City against any such liens.

5. Construction and Maintenance. The Cable shall be constructed, reconstructed and maintained in accordance with plans approved by the City. Approval by the City of this Agreement or of such plans shall not constitute a warranty or representation by the City that such plans conform with federal, state and/or local laws, ordinances, rules, codes and regulations applicable thereto. The Company shall comply with all applicable laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the City, or of any governmental entity or agency having jurisdiction over Surveyor Blvd. or the use thereof, including, but not limited to, the securing of building and excavation permits, as necessary or required.

All work upon or in connection with the Cable shall be done to the City's satisfaction at such times and in such manner as not to interfere with or create a hazard to the operation, maintenance, and/or use of any street, roadway, or other right-of-way. In the construction, reconstruction, maintenance, and operation of the Cable, the Company shall keep the Cable and the City's property in a neat and safe condition and in good order and operating condition, failing which, the City may do so at the Company's expense. Upon written notice from the City, by and through the City's Director of Public Works or his designee, stating in general terms how and in what manner maintenance or repair of the Cable or the street or right-of-way in which the Cable is located is required, Company shall perform such maintenance or repair; if Company fails to do so, the City shall have the right (in addition to any other rights of the City provided for herein or at law, in equity, or otherwise) to perform such maintenance or repair, the cost of which shall be

borne by the Company. If required by the City in its use of the City's property, Company, at its sole cost, shall reconstruct, relocate or alter the Cable. In the event that the Company has not relocated the Cable as directed by the City's Director of Public Works within a reasonable length of time (as determined by the Director of Public Works), the City shall have the right, without liability to the Company, to relocate, cause to be relocated, or remove the Cable, and the Company shall reimburse the City for all costs of relocation or removal. Except in an emergency, Company shall give the City at least five (5) days written notice, or such longer time as may be required by the City in any ordinance, rule, regulation, standard, code, or policy of the City, of the day and hour it proposes to do any work on the Cable. Company shall bear responsibility for timely and complete repairs in the event of damage to the Cable from any cause whatsoever.

Company shall cooperate with the City in making any test the City requires of any installation or condition which, in its judgment, may have an adverse effect on any of the facilities of the City. All costs incurred by the test, or any corrections thereof, shall be borne by Company.

6. Miscellaneous Obligations of Company.

A. Company shall maintain a complete set of "as built" plans of the Cable and shall furnish copies of the same to the City.

B. Company shall maintain a local agent who is familiar with the Cable and whose name and address shall be furnished at least annually to the City. The local agent shall be responsible for satisfying all information needs of the City.

7. Indemnification; Insurance.

A. (1) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE COMPANY'S PERFORMANCE OF THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(2) WITH RESPECT TO THE COMPANY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (1), COMPANY SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(3) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE

COMPANY AND THE INDEMNITEE, THE COMPANY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION A. WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE COMPANY'S OWN PERCENTAGE OF RESPONSIBILITY.

(4) WITH RESPECT TO THE COMPANY'S DUTY TO DEFEND SET FORTH HEREBIN IN SUBSECTION A., THE COMPANY SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED HOWEVER, THAT THE CITY SHALL HAVE THE RIGHT TO APPROVE THE SELECTION OF COUNSEL BY THE COMPANY AND TO REJECT THE COMPANY'S SELECTION OF COUNSEL AND TO SELECT COUNSEL OF THE CITY'S OWN CHOOSING, IN WHICH INSTANCE, THE COMPANY SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND THE EXPENSES ASSOCIATED THERETO. THE CITY AGREES THAT IT WILL NOT UNREASONABLY WITHHOLD APPROVAL OF COUNSEL SELECTED BY COMPANY, AND FURTHER, THE CITY AGREES TO ACT REASONABLY IN THE SELECTION OF COUNSEL OF ITS OWN CHOOSING.

(5) IN THE EVENT THAT THE COMPANY FAILS OR REFUSES TO PROVIDE A DEFENSE TO ANY CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE CITY SHALL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION, THROUGH COUNSEL OF ITS OWN CHOICE, ON BEHALF OF AND FOR THE ACCOUNT OF, AND AT THE

RISK OF THE COMPANY, AND THE COMPANY SHALL BE OBLIGATED TO PAY THE REASONABLE AND NECESSARY COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED BY THE CITY IN CONNECTION WITH HANDLING THE PROSECUTION OR DEFENSE AND ANY APPEAL(S) RELATED TO SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION.

(6) THE PROVISIONS OF THIS SECTION 7.A. SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

B. The Company shall provide and maintain the minimum insurance coverages set forth below during the term hereof:

1. 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, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

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

3. 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.

4. Builders Risk coverage as follows:

(a) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.

(b) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.

Any contractor(s) hired by the Company to perform work pursuant to or in connection with this Agreement shall maintain insurance coverage equal to that required of the Company. It is the responsibility of the Company to assure compliance with this provision.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form comprehensive general liability endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, Company shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.

2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

3. A waiver of subrogation in favor of The Town of Addison shall be contained in the Workers Compensation, Builders Risk, and all liability policies.

4. 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.

5. All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.

6. 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.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. Company may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to the City simultaneously with the execution of this License, and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Company shall furnish the Town of Addison with certified copies of all insurance policies.

8. Termination. Prior to the expiration of the term of this License Agreement, this Agreement shall terminate upon:

- A. abandonment of the Cable or discontinuance of use thereof;
- B. failure of Company to correct any default hereunder promptly after receipt of notice from the City;
- C. upon thirty (30) days' written notice by the City to Company; or
- D. upon thirty (30) days' written notice by Company to the City.

Upon the expiration or termination of this Agreement, the Company shall remove the Cable and restore the premises to the City's satisfaction, failing which the City may arrange to do so at Company's expense.

9. Notice. Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed delivered upon hand-delivery or upon three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows:

To the City:

5300 Belt Line Road
Dallas, TX 75254

Attn: Director of Public Works

To the Company:

15000 Surveyor Blvd.
Addison, Texas

Attn: Mr. Barry Tiedt

10. Applicable Law; Venue. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties

agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

11. Assignment. The rights granted by this Agreement shall not be assigned, transferred, or otherwise conveyed by the Company without the express prior written consent of the City. Any required consent is to be evidenced by an ordinance or resolution of the City that fully recites the terms and conditions, if any, upon which consent is given.

12. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Company relative to the Cable as described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.

13. Amendment. This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and the Company.

14. No Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity, except as may be provided for herein.

15. Non-Waiver; Rights Cumulative. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law, in equity, or otherwise.

16. Survival. Any rights and remedies either party may have with respect to the other arising out of the performance of or in connection with this Agreement shall survive the expiration or termination of this Agreement.

17. Relationship. The parties hereto have the relationship only of licensor and licensee, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties.

18. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect.

19. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

20. 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 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.

IN WITNESS WHEREOF, the City and the Company have executed this License Agreement on the day and year first set forth above.

TOWN OF ADDISON, TEXAS

BARRETT BURKE WILSON CASTLE
DAFFIN & FRAPPIER, L. L. P.

By: Ron Whitehead
Ron Whitehead, City Manager

By: Barry Tiedt, CFO
Barry Tiedt, Chief Financial Officer

Its: Chief Financial Officer

ATTEST:

By: C. Moran
Carmen Moran, City Secretary

EXHIBIT B-Assignment Agreement

ASSIGNMENT AND ASSUMPTION OF LICENSE

THIS ASSIGNMENT AND ASSUMPTION OF LICENSE (this "Assignment") is made as of the day of _____, 2008 (the "Effective Date"), by and between BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, a Texas limited liability partnership (f/k/a Barrett Burke Wilson Castle Daffin & Frappier, LLP), its successors and assigns ("Assignor") and NATIONAL DEFAULT EXCHANGE HOLDINGS, L.P., a Delaware limited partnership ("Assignee").

RECITALS:

- A. The Town of Addison, Texas granted a license to Assignor pursuant to that certain License Agreement dated June 8, 2004 (the "License"), attached hereto as Exhibit A.
- B. The License allows for Assignor to install, maintain and operate a telecommunications cable (as further described in the License) under Surveyor Blvd, connecting two properties along Surveyor Blvd., which are generally described as 15000 Surveyor Blvd. and 4004 Belt Line, Forum II, Suite 100, as depicted on Exhibit 1 attached to the License (the "Property").
- C. Assignor previously assigned its interest, as tenant, in the leases affecting the Property to Assignee. Assignor now desires to assign all of its right, title and interest in and to the License to Assignee, and Assignee wishes to assume all of Assignor's right, title and interest in the License, specifically acknowledging that it is subject to the terms, restrictions and conditions contained in the License.
- D. Pursuant to Section 11 of the License, Assignor has obtained the prior written consent of the Director of Public Works of the Town of Addison for such assignment.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the provisions, covenants and agreements hereinafter set forth, it is agreed as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee all of Assignor's right, title and interest in and to the License.
2. Assignee hereby accepts the assignment of the License and agrees to assume, discharge and be bound by, in accordance with the terms of the License, all of Assignor's duties and obligations under the License, specifically acknowledging that it is subject to the terms, restrictions and conditions contained in the License.
3. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform any of the foregoing obligations assumed by Assignee hereunder to the extent accruing and applicable to the period of time occurring from and after the Effective Date.
4. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the foregoing obligations assumed by Assignee hereunder to the extent accruing and applicable to the period of time occurring prior to the Effective Date.

5. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature Pages Immediately Follow.]

**SIGNATURE PAGE FOR
ASSIGNMENT AND ASSUMPTION
OF LICENSE**

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed effective as of the Effective Date.

ASSIGNOR:

**BARRETT DAFFIN FRAPPIER TURNER
& ENGEL, LLP,**

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2008, by _____ of BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, a _____ limited liability partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability partnership.

Notary Public, State of _____

My Commission Expires:

Printed Name of Notary Public

EXHIBIT C-Amendment to License Agreement

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AMENDMENT TO LICENSE AGREEMENT

This Amendment to License Agreement (the "Amendment") is entered into this ____ day of March, 2009 by and between the Town of Addison, Texas (the "City"), and Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership ("Barrett Daffin"), and National Default Exchange Holdings, L.P., a Delaware limited partnership ("National Default").

Recitals:

1. On June 8, 2004 the City entered into an agreement entitled "License Agreement" (and so called herein, a true and correct copy of which is attached hereto as Exhibit A) with Barrett Daffin (formerly known as Barrett Burke Wilson Castle Daffin & Frappier, L.L.P., a Texas limited liability partnership), in which the City granted to Barrett Daffin a nonexclusive, revocable license to construct, reconstruct, maintain and operate one four (4) inch conduit containing both fiber and copper cable under Surveyor Boulevard for the sole purpose of connecting for telecommunication purposes the properties located at 15000 Surveyor Boulevard and 4004 Belt Line Road, Forum II, Suite 100, within the City (the "Properties").

2. Barrett Daffin has assigned its interest as tenant in the Properties to National Default, and in connection therewith desired to assign its interest in the License Agreement to National Default pursuant to that Assignment and Assumption of License by and between Barrett Daffin and National Default, a true and correct copy of which is attached hereto as Exhibit B (the "Assignment Agreement").

3. Pursuant to Section 11 of the License Agreement, Barrett Daffin was required to obtain the express prior written consent of the City to the assignment of the License Agreement as evidenced by an ordinance or resolution of the City that recites any terms and conditions upon which the consent is given. In accordance with the said Section 11, on March 10, 2009 the City Council of the City adopted Resolution No. _____ setting forth the City's consent to the assignment and the terms and conditions upon which such consent was given. One condition upon which consent was given was that the License Agreement be amended by amending Section 7, subsection A. regarding indemnity. In accordance therewith, the City, Barrett Daffin, and National Default do hereby enter into this Amendment.

NOW, THEREFORE, for and in consideration of the above and foregoing Recitals, the sum of Ten and No/100 Dollars, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Town of Addison, Texas, Barrett Daffin Frappier Turner & Engel, LLP, a Texas limited liability partnership, and National Default Exchange Holdings, L.P., a Delaware limited partnership (Barrett Daffin and National Default are herein referred to as the "Licensee") do hereby contract and agree as follows:

Section 1. Amendment. The License Agreement is hereby amended by amending Section 7., subsection A. in its entirety so that it shall read as follows:

A. LICENSEE'S INDEMNITY OBLIGATION. Licensee covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Licensor), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Town of Addison, Texas and/or any other Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) any repair to or construction, reconstruction, maintenance (or lack thereof), operation or use of, the Cable by Licensee, its owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, tenants, subtenants, licensees, sublicensees, concessionaires, or any other person or entity for whom Licensee is legally responsible, and their respective owners, directors, officers, shareholders, managers, partners, employees, agents, engineers, architects, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, and concessionaires (collectively, "Licensee Persons"), (ii) any representations and/or warranties by Licensee under this Agreement, and/or (iii) any act or omission under, in performance of, or in connection with this Agreement by Licensee or by any of the Licensee Persons. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Licensee's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Licensee's liability for Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Licensee shall promptly advise Licensor in writing of any claim or demand against any Addison Person related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and own expense, to participate in such defense without relieving Licensee of any of its obligations hereunder. The defense, indemnity, and hold harmless obligations set forth herein shall survive the expiration or termination of this Agreement.

Section 2. No Other Amendments. Except to the extent modified or amended herein, all other terms, conditions, and provisions of the License Agreement shall remain unchanged and in full force and effect.

Section 3. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties execute this Amendment this _____ day of _____, 2009.

TOWN OF ADDISON, TEXAS

LICENSEE:

By: _____
Ron Whitehead, City Manager

BARRETT DAFFIN FRAPPIER TURNER &
ENGEL, LLP

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____
Typed/printed name: _____
Title: _____

NATIONAL DEFAULT EXCHANGE
HOLDINGS, L.P., a Delaware limited
partnership

By: _____
Typed/printed name: _____
Title: _____